

# ARKANSAS CODE OF 1987 ANNOTATED



## 2013 SUPPLEMENT VOLUME 2B

**Place in pocket of bound volume**

*Prepared by the Editorial Staff of the Publisher*

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Supplement pamphlet for Volume 1*

5049220

ISBN 978-0-327-10031-7 (Code set)  
ISBN 978-0-327-02032-5 (Volume 2B)



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701 East Water Street, Charlottesville, VA 22902  
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## **TITLE 4**

### **BUSINESS AND COMMERCIAL LAW**

(CHAPTERS 1-24 IN VOLUME 2A; CHAPTERS 41-117 IN  
VOLUME 2C)

### ***SUBTITLE 3. CORPORATIONS AND ASSOCIATIONS***

#### **CHAPTER 25**

#### **GENERAL PROVISIONS**

##### **SECTION.**

**4-25-102.** Corporate security or surety  
bonds.

##### **4-25-102. Corporate security or surety bonds.**

(a) Except as provided in § 23-37-314, § 23-37-511 [repealed], § 23-37-603, § 23-39-505, § 23-42-305, or § 23-55-204, if the laws of this state provide for the furnishing of a corporate security or surety bond to assure financial responsibility, the person, firm, or corporation required to provide the bond, in lieu of providing the corporate security or surety bond, may furnish the principal amount of at least the amount of the bond to be provided in the form of:

(1) Certificates of deposit issued by Arkansas banks and savings and loan associations; or

(2) Direct general obligation securities issued by:

(A) The State of Arkansas;

(B) An agency or instrumentality of the State of Arkansas;

(C) A political subdivision of this state;

(D) The United States; or

(E) An agency of the United States.

(b) It is not the intention of this section to prohibit the furnishing of personal bond or the furnishing of a property or other bond in any other such manner as is now provided by law.

(c) This section shall not apply to banks, savings and loan associations, any case where federal law requires a corporate surety bond, or in any case where performance of contractual obligations is required on the part of the person required to provide bond.

(d) Every governmental agency affected by this section is authorized and directed to issue such rules and regulations as are necessary and appropriate for the carrying out of this section.

**History.** Acts 1979, No. 634, §§ 1, 2; A.S.A. 1947, §§ 66-4105, 66-4106; Acts 2009, No. 535, § 1.

**Amendments.** The 2009 amendment subdivided (a), inserted “Except as pro-

vided in § 23-37-314, § 23-37-511, § 23-37-603, § 23-39-505, § 23-42-305, or § 23-55-404” in the introductory language, and made related and minor stylistic changes throughout the subsection.

## **4-25-109. Corporation permitted to change its state of incorporation.**

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Business Law, 24 U. Ark. Little Rock L. Rev. 407.

## **CHAPTER 26**

# **BUSINESS CORPORATIONS GENERALLY**

### **SUBCHAPTER.**

- 5. REGISTERED OFFICES AND AGENTS.
- 7. SHAREHOLDERS.
- 10. CONVERSION AND MERGER.
- 11. DISSOLUTION AND LIQUIDATION.

## **SUBCHAPTER 1 — GENERAL PROVISIONS**

### **4-26-101. Title.**

### **RESEARCH REFERENCES**

**Ark. L. Rev.** A License to Lie, Cheat, and Steal? Restriction or Elimination of

Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643.

## **SUBCHAPTER 5 — REGISTERED OFFICES AND AGENTS**

### **SECTION.**

4-26-501 — 4-26-503. [Repealed.]

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

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### **4-26-501 — 4-26-503. [Repealed.]**

**Publisher's Notes.** These sections, concerning requirement for a registered office and agent, change of office or agent and resignation of agent, and service of process on a corporation, were repealed by Acts 2007, No. 638, § 2.

Section 4-26-501 was derived from Acts 1965, No. 576, § 12; A.S.A. 1947, § 64-113.

Section 4-26-502 was derived from Acts 1965, No. 576, § 13; 1973, No. 379, § 1; A.S.A. 1947, § 64-114.



Section 4-26-503 was derived from Acts 1965, No. 576, § 14; A.S.A. 1947, § 64-115.

## SUBCHAPTER 6 — CORPORATE FINANCE

### 4-26-610. Restrictions on transfer of shares.

#### CASE NOTES

##### **Enforceable Contracts.**

Grant of summary judgment in favor of the employer in its action to recover interest on a promissory note used to purchase stock was proper where the employee admitted that he signed the note and did not

contend that the note was invalid; further, he did not demonstrate that the provisions of the stockholders agreement were against public policy. *Wingfield v. Contech Constr. Prods.*, 83 Ark. App. 16, 115 S.W.3d 336 (2003).

## SUBCHAPTER 7 — SHAREHOLDERS

#### SECTION.

4-26-707. Class voting.

### 4-26-707. Class voting.

(a) In each instance where, under § 4-26-302(a)(4), § 4-26-303, § 4-26-611(e), § 4-26-705(a)(2), § 4-26-903(a)(3)(B), § 4-26-1007(e) and (f), or § 4-26-1101, a provision is made for the class voting of stock, thus requiring the votes of a certain percentage of each separate class of shares to authorize some specific corporate action, each class of shares to which a requirement of class voting is applicable shall be bound by the votes which are cast in person or by proxy of at least two-thirds ( $\frac{2}{3}$ ) of those members of such class who are present in person or represented at the meeting by proxy if due and timely notice of the meeting has been given to all members of said class and at least fifty percent (50%) of the shares embraced in the class are present in person or by proxy.

(b) The certificate to articles of amendment under § 4-26-304, articles of merger or consolidation under § 4-26-1009, and articles of dissolution under § 4-26-1102 shall, in all situations to which this section applies, be amended and adjusted to show the manner in which the requirements of this section were met in respect to class voting.

(c) This section shall apply only to corporations having five hundred (500) or more shareholders.

**History.** Acts 1971, No. 345, §§ 1-3; A.S.A. 1947, §§ 64-225 — 64-227; Acts 2009, No. 408, § 8.

**Amendments.** The 2009 amendment

substituted “§ 4-26-1007(e) and (f)” for “§ 4-26-1003(d)” in (a); substituted “§ 4-26-1009” for “§ 4-26-1004” in (b); and made minor stylistic changes.

**SUBCHAPTER 9 — MORTGAGE, SALE, ETC., OF ASSETS****4-26-904. Sale or exchange of assets — Rights of dissenting shareholders.****RESEARCH REFERENCES**

**ALR.** When is corporation close, or closely-held, corporation under common or statutory law. 111 A.L.R.5th 207.

**SUBCHAPTER 10 — CONVERSION AND MERGER****SECTION.**

- 4-26-1001. Definitions.
- 4-26-1002. Conversion.
- 4-26-1003. Action on plan of conversion by converting corporation.
- 4-26-1004. Filings required for conversion — Effective date.
- 4-26-1005. Effect of conversion.
- 4-26-1006. Merger.
- 4-26-1007. Action on plan of merger by constituent corporation.

**SECTION.**

- 4-26-1008. Merger of subsidiary.
- 4-26-1009. Filings required for merger — Effective date.
- 4-26-1010. Effect of merger.
- 4-26-1011. Rights of dissenting shareholders.
- 4-26-1012. Chapter not exclusive.

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**Publisher's Notes.** This subchapter was repealed by Acts 2009, No. 408, § 1. The subchapter was derived from the following sources:

- 4-26-1001. Acts 1965, No. 576, § 70; 1985, No. 416, § 1; 1985, No. 606, § 1; A.S.A. 1947, § 64-701.
- 4-26-1002. Acts 1965, No. 576, § 71; 1985, No. 416, § 2; 1985, No. 606, § 2; A.S.A. 1947, § 64-702.
- 4-26-1003. Acts 1965, No. 576, § 72; A.S.A. 1947, § 64-703.

- 4-26-1004. Acts 1965, No. 576, § 73; A.S.A. 1947, § 64-704.
- 4-26-1005. Acts 1965, No. 576, § 74; A.S.A. 1947, § 64-705.
- 4-26-1006. Acts 1965, No. 576, § 75; A.S.A. 1947, § 64-706.
- 4-26-1007. Acts 1965, No. 576, § 76; A.S.A. 1947, § 64-707.
- 4-26-1008. Acts 1965, No. 576, § 77; A.S.A. 1947, § 64-708.
- 4-26-1009. Acts 1965, No. 576, § 77.1; A.S.A. 1947, § 64-709.

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**4-26-1001. Definitions.**

As used in this subchapter:

- (1) "Constituent corporation" means a constituent organization that is a corporation;
- (2) "Constituent organization" means an organization that is party to a merger;
- (3) "Converted organization" means the organization into which a converting organization converts under §§ 4-26-1002 — 4-26-1005;
- (4) "Converting corporation" means a converting organization that is a corporation;

(5) “Converting organization” means an organization that converts into another organization under § 4-26-1002;

(6) “Governing statute” of an organization means the statute that governs the organization’s internal affairs;

(7) “In a record” means maintained or kept on file by the organization at an office of the organization or with the Secretary of State;

(8)(A) “Organization” means:

(i) A partnership, including a limited liability partnership;

(ii) A limited partnership, including a limited liability limited partnership;

(iii) A limited liability company;

(iv) A business trust;

(v) A corporation; or

(vi) Any other entity that has a governing statute.

(B) “Organization” includes a domestic or foreign organization whether or not the organization is organized for profit;

(9) “Organizational documents” means:

(A) For a domestic or foreign general partnership, its partnership agreement and, if applicable, statement of qualification;

(B) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) For a domestic or foreign limited liability company, its articles of organization and operating agreement or the comparable records provided for in its governing statute;

(D) For a business trust, its agreement of trust and declaration of trust;

(E) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and agreements among its shareholders that are authorized by its governing statute or the comparable records provided for in its governing statute; and

(F) For any other organization, the records that:

(i) Create the organization;

(ii) Determine the internal governance of the organization; and

(iii) Determine the relations among the organization’s owners, members, and interested parties; and

(10) “Surviving organization” means an organization into which one (1) or more other organizations are merged.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1002. Conversion.**

(a) An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization under this section and §§ 4-26-1003 — 4-26-1005 and a plan of conversion if the:

(1) Other organization’s governing statute authorizes the conversion and is complied with; and



(2) Conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

(b) A plan of conversion must be in a record and must include the:

(1) Name and form of the organization before conversion;

(2) Name and form of the organization after conversion;

(3) Terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) Organizational documents of the converted organization.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1003. Action on plan of conversion by converting corporation.**

(a) A plan of conversion may be approved if the:

(1) Board of directors recommends the plan of conversion to the shareholders, unless the board of directors:

(A) Determines that because of a conflict of interest or other special circumstances it should make no recommendation; and

(B) Communicates the basis for its determination at the time the plan of conversion is submitted to the shareholders; and

(2) Shareholders approve the plan by the affirmative vote of the holders of at least two-thirds ( $\frac{2}{3}$ ) of the outstanding shares entitled to vote.

(b) The board of directors may condition its submission of the proposed conversion on any basis.

(c)(1) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting:

(A) Not less than twenty (20) days before the meeting; and

(B) In the manner provided in § 4-26-703 for giving notice of meetings of shareholders.

(2) The notice shall:

(A) State that a purpose of the meeting is to consider the plan of conversion; and

(B) Contain or be accompanied by a copy or summary of the plan.

(d) Unless this chapter, the articles of incorporation, or the board of directors acting under subsection (b) of this section require a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by at least two-thirds ( $\frac{2}{3}$ ) of all the votes entitled to be cast on the plan by the voting group.

(e) Subject to any contractual rights, until a conversion is filed under § 4-26-1004, a converting corporation may amend the plan or abandon the planned conversion:

(1) As provided in the plan; and

(2) Except as prohibited by the plan, by the same consent required to approve the plan.



**History.** Acts 2009, No. 408, § 1.

#### **4-26-1004. Filings required for conversion — Effective date.**

(a)(1) After a plan of conversion is approved a converting corporation shall file articles of conversion with the Secretary of State.

(2) The articles of conversion shall include:

(A) A statement that the corporation has been converted into another organization;

(B) The name and form of the converted organization and the jurisdiction of its governing statute;

(C) The date the conversion is effective under the governing statute of the converted organization;

(D) A statement that the conversion was approved as required by this chapter;

(E) A statement that the conversion was approved as required by the governing statute of the converted organization;

(F) A statement confirming that the converted organization has filed a statement appointing an agent for service of process under § 4-20-112 if the converted organization is a foreign organization not authorized to transact business in this state; and

(G)(i) A copy of the plan of conversion; or

(ii) A statement that:

(a) Contains the address of an office of the organization where the plan of conversion is on file; and

(b) A copy of the plan of conversion will be furnished by the converting corporation on request and without cost to any shareholder of the converting corporation.

(b)(1) If the converting organization is not a converting corporation, the converting organization shall file articles of incorporation with the Secretary of State.

(2) The articles of incorporation shall include, in addition to the information required by § 4-26-202:

(A) A statement that the corporation was converted from another organization;

(B) The name and form of the converting organization and the jurisdiction of its governing statute; and

(C) A statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(c) A conversion becomes effective:

(1) If the converted organization is a corporation, when the articles of incorporation take effect; and

(2) If the converted organization is not a corporation, as provided by the governing statute of the converted organization.

**History.** Acts 2009, No. 408, § 1.

**4-26-1005. Effect of conversion.**

(a) An organization that has been converted under this subchapter is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting organization remains vested in the converted organization;

(2) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(3) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) Except as otherwise agreed, the conversion does not dissolve a converting corporation under § 4-26-1101 et seq.

(c)(1) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation if before the conversion the converting corporation was subject to suit in this state on the obligation.

(2) A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the converted organization:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

**History.** Acts 2009, No. 408, § 1.

**4-26-1006. Merger.**

(a) A corporation may merge with one (1) or more other constituent organizations under this section and §§ 4-26-1007 — 4-26-1010 and a plan of merger if:

(1) The governing statute of each of the other organizations authorizes the merger;

(2) The merger is not prohibited by the law of a jurisdiction that enacted the governing statute; and

(3) Each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger shall be in a record and shall include:

(1) The name and form of each constituent organization;

(2) The name and form of the surviving organization;

(3) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization



into any combination of money, interests in the surviving organization, and other consideration; and

(4) Any amendments to be made by the merger to the surviving organization's organizational documents.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1007. Action on plan of merger by constituent corporation.**

(a) Except as provided in subsection (g) of this section and after adopting a plan of merger, the board of directors of each corporation which is a party to the merger shall submit the plan of merger for approval by its shareholders.

(b) A plan of merger may be approved if the:

(1) Board of directors recommends the plan of merger to the shareholders, unless the board of directors:

(A) Determines that because of a conflict of interest or other special circumstances it should make no recommendation; and

(B) Communicates the basis for its determination at the time the plan of merger is submitted to the shareholders; and

(2) Shareholders entitled to vote approve the plan.

(c) The board of directors may condition its submission of the proposed merger on any basis.

(d)(1) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting:

(A) Not less than twenty (20) days before the meeting; and

(B) In the manner provided in § 4-26-703 for giving notice of meetings of shareholders.

(2) The notice shall:

(A) State that a purpose of the meeting is to consider the plan of merger; and

(B) Contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the board of directors acting under subsection (c) of this section require a greater vote or a vote by voting groups, the plan of merger to be authorized must be approved by the affirmative vote of the holders of at least two-thirds ( $\frac{2}{3}$ ) of the outstanding shares entitled to vote, and if by voting group, by each voting group entitled to vote separately on the plan by at least two-thirds ( $\frac{2}{3}$ ) of all the votes entitled to be cast on the plan by the voting group.

(f) Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under § 4-26-303.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ except for amendments enumerated in § 4-26-307 from its articles before the merger;

(2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares or the interest comparable to shares in an entity other than a corporation, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(3) The number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(4) The number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g) of this section:

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions; and

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) Subject to any contractual rights, at any time before articles of merger are filed the planned merger may be abandoned without further shareholder action in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1008. Merger of subsidiary.**

(a) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary corporation into itself without approval of the shareholders of the parent corporation or subsidiary corporation.

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(1) The names of the parent corporation and the subsidiary corporation; and

(2) The manner and basis of converting the shares of the subsidiary corporation into:

(A) Shares, obligations, or other securities of the parent corporation or any other corporation; or

(B) Cash or other property.



(c) The parent corporation shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary corporation who does not waive the mailing requirement in writing.

(d) The parent corporation may not deliver articles of merger to the Secretary of State for filing until at least thirty (30) days after the date the parent corporation mailed a copy of the plan of merger to each shareholder of the subsidiary corporation who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in § 4-26-307.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1009. Filings required for merger — Effective date.**

(a) After each constituent organization has approved a merger, articles of merger must be signed by an authorized representative of each constituent organization.

(b) The articles of merger shall include:

(1) The name and form of each constituent organization and the jurisdiction of its governing statute;

(2) The name and form of the surviving organization and the jurisdiction of its governing statute;

(3) The date the merger is effective under the governing statute of the surviving organization;

(4) Any amendments provided for in the plan of merger for the organizational document of the surviving organization;

(5) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(6) A statement confirming that the surviving organization has filed a statement appointing an agent for service of process under § 4-20-112 if the surviving organization is a foreign organization not authorized to transact business in this state;

(7)(A) A copy of the plan of merger; or

(B) A statement that:

(i) Contains the address of an office of the surviving organization where the plan of merger is on file; and

(ii) A copy of the plan of merger will be furnished by the surviving organization on request and without cost to any shareholder, member, partner, or other owner of any constituent organization; and

(8) Any additional information required by the governing statute of any constituent organization.

(c) Each constituent organization shall deliver the articles of merger for filing in the office of the Secretary of State.

(d) A merger becomes effective under this subchapter:

(1) If the surviving organization is a corporation, upon the later of:

(A) Compliance with subsection (c) of this section; or

(B) The date specified in the articles of merger; or

(2) If the surviving organization is not a corporation, as provided by the governing statute of the surviving organization.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1010. Effect of merger.**

(a) When a merger becomes effective:

(1) The surviving organization continues or comes into existence;  
(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against a constituent organization that ceases to exist may continue as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) Except as otherwise agreed, if a constituent corporation ceases to exist, the merger does not dissolve the corporation for purposes of § 4-26-1101 et seq.; and

(9) Any amendments provided for in the articles of merger for the organizational documents of the surviving organization become effective.

(b)(1) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation.

(2) A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the surviving organization:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

**History.** Acts 2009, No. 408, § 1.



**4-26-1011. Rights of dissenting shareholders.**

(a) If a conversion or merger is effected under this subchapter, the surviving or new organization shall pay to a shareholder of a corporation that is a party to the conversion or merger the fair value of the shareholder's shares, upon surrender of his or her certificate or certificates representing the shares, if the shareholder:

(1) Files with the corporation before or at the meeting of shareholders at which the plan of conversion or merger is submitted to a vote, a written objection to the plan of conversion or merger;

(2) Does not vote in favor of the plan of conversion or merger; and

(3) Within ten (10) days after the date on which the vote was taken makes written demand on the surviving or new domestic or foreign organization for payment of the fair value of his or her shares as of the day before the date on which the vote was taken approving the conversion or merger.

(b) The demand shall state the number and class of the shares owned by the dissenting shareholder.

(c) A shareholder failing to make demand within the ten-day period shall be bound by the terms of the conversion or merger.

(d) Within ten (10) days after the conversion or merger is effected, the surviving or new organization shall give notice to each dissenting shareholder who has made demand under this section for the payment of the fair value of his or her shares.

(e)(1) If within thirty (30) days after the date on which the conversion or merger was effected the value of the shares is agreed upon by the dissenting shareholder and the surviving or new organization, payment shall be made within ninety (90) days after the date on which the conversion or merger was effected upon the surrender of the shareholder's certificate or certificates representing the shares.

(2) Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in the shares or in the corporation.

(f)(1)(A) If within the period of thirty (30) days the shareholder and the surviving or new organization do not agree to the value of the dissenting shareholder's shares, then the dissenting shareholder within sixty (60) days after the expiration of the thirty-day period may file a petition for a finding and determination of the fair value of the shares and shall be entitled to judgment against the surviving or new organization for the amount of the fair value as of the day before to the date on which the vote was taken approving such conversion or merger, together with interest thereon to the date of the judgment.

(B) The petition shall be filed:

(i) In the circuit court of the county in which the registered office of the surviving organization is located if the surviving organization is a domestic organization; or

(ii) In the Pulaski County Circuit Court if the surviving organization is a foreign organization.

(2) The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new organization of the certificate or certificates representing the shares.

(3) Upon payment of the judgment the dissenting shareholder shall cease to have any interest in the shares or in the surviving or new organization.

(4) If a dissenting shareholder does not file a petition within the time allowed by this section, the dissenting shareholder and all persons claiming under the dissenting shareholder are bound by the terms of the conversion or merger.

(g) Shares acquired by the surviving or new organization in payment of the agreed value of the shares or a judgment under this section may be held and disposed of by the organization as in the case of other treasury shares.

(h) This section does not apply to a conversion or merger if on the date of filing the articles of conversion or merger, the surviving organization is the owner of all outstanding shares of the other domestic or foreign organizations that are parties to the conversion or merger.

**History.** Acts 2009, No. 408, § 1.

#### **4-26-1012. Chapter not exclusive.**

This chapter does not preclude an organization from being converted or merged under other law.

**History.** Acts 2009, No. 408, § 1.

### **SUBCHAPTER 11 — DISSOLUTION AND LIQUIDATION**

#### **SECTION.**

4-26-1107. Involuntary dissolution.

#### **4-26-1103. Procedure after dissolution.**

#### **CASE NOTES**

**Cited:** Longing Family Revocable Trust v. Snowden, 2013 Ark. App. 81, — S.W.3d — (2013).

#### **4-26-1107. Involuntary dissolution.**

(a) A corporation may be dissolved involuntarily by a decree of the circuit court of the county in which its principal place of business is located or, if it has no principal place of business, in the county wherein its registered office is situated, otherwise in Pulaski County, in an action filed in the name of the state by the Attorney General when it is established that:



(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred on it by law or has continued to transact business beyond the scope of the purpose expressed in its articles of incorporation; or

(3) The corporation has failed to comply with any of the provisions of this chapter in respect to the designation and maintenance in this state of a registered agent or registered office or in respect to any change of its registered agent or registered office; or

(4) A misrepresentation has been made of any material matter in any application, certificate, affidavit, or other document submitted by the corporation pursuant to this chapter.

(b)(1) If the writ of summons, which shall be returnable in thirty (30) days, issued on the complaint in the action is returned by the sheriff unserved because no registered agent or other person eligible to receive service can be found in his jurisdiction, then upon the filing of the writ of summons with the clerk of the court, bearing the sheriff's return, the clerk shall issue and publish against the defendant corporation, for the time and in the manner prescribed by Rule 4 of the Arkansas Rules of Civil Procedure; and he shall appoint an attorney ad litem as provided by law.

(2) The Attorney General shall also cause a copy of the warning order and the complaint to be mailed to the defendant corporation at its registered office as shown on the records of the Secretary of State at least twenty (20) days prior to the trial of such suit or the entry of decree therein; and the certificate of the Attorney General as to the mailing shall be prima facie evidence thereof.

(3) Compliance with the jurisdictional requirements will confer on the court jurisdiction to decree the dissolution of the corporation.

(c) The court will cause certified copies of the decree of dissolution to be filed with the Secretary of State and the county clerk of the county, if other than Pulaski County, in which the corporation's registered office is located. No fee shall be charged by either of the officials for the filing.

**History.** Acts 1965, No. 576, § 89; A.S.A. 1947, § 64-907; Acts 2013, No. 1148, § 1.

**Amendments.** The 2013 amendment, in (b)(1), substituted "by Rule 4 of the

Arkansas Rules of Civil Procedure" for "in § 16-58-130, a warning order" and "as provided by law" for "pursuant to § 16-65-403(a)(1) [repealed]."

## **4-26-1108. Jurisdiction of court to liquidate assets and business of corporation.**

### **RESEARCH REFERENCES**

**ALR.** Use of marketability discount in valuing closely held corporation or its stock. 16 A.L.R.6th 693.

CASE NOTES

**Reasonable Expectation.**

Minority shareholders had no “reasonable expectation” about the running of a car dealership where evidence showed

that the majority shareholder only agreed to the deal based on the ability to control the operations. *Taylor v. Hinkle*, 360 Ark. 121, 200 S.W.3d 387 (2004).

**CHAPTER 27**  
**BUSINESS CORPORATION ACT OF 1987**

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. INCORPORATION.
- 4. NAMES.
- 5. OFFICE AND AGENT.
- 6. SHARES AND DISTRIBUTIONS.
- 7. SHAREHOLDERS.
- 8. DIRECTORS — OFFICERS — MEETINGS — STANDARDS OF CONDUCT — INDEMNIFICATION.
- 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.
- 11. CONVERSION AND MERGER.
- 13. DISSENTERS’ RIGHTS.
- 14. DISSOLUTION.
- 15. FOREIGN CORPORATIONS.
- 16. RECORDS AND REPORTS.
- 17. TRANSITION PROVISIONS.
- 18. SHARE EXCHANGE.

**SUBCHAPTER 1 — GENERAL PROVISIONS**

**B: Filing Documents**

SECTION.

- 4-27-122. Filing, service, and copying fees.
- 4-27-125. Filing duty of Secretary of State.

SECTION.

**D: Definitions**

- 4-27-141. Notice.

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

Acts 2007, No. 646, § 14: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any undue hardship to any entity by standardiz-

ing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the state’s fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

PART A: SHORT TITLE AND RESERVATION OF POWER

4-27-101. Short title.

RESEARCH REFERENCES

Ark. L. Rev. The Series LLC, and a Comment, Corporate Pre-Organization Series of Difficult Questions, 60 Ark. L. Liability in an LLC World, 61 Ark. L. Rev. 385. 301.

PART B: FILING DOCUMENTS

4-27-122. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

“DOCUMENT	FEE
(1) Articles of incorporation .....	\$ 50.00
(2) Application for use of indistinguishable name	No fee
(3) Application for reserved name .....	25.00
(4) Notice of transfer of reserved name .....	25.00
(5) Application for registered name .....	50.00
(6) Application for renewal of registered name ....	25.00
(7) Amendment of articles of incorporation .....	50.00
(8) Restatement of articles of incorporation with amendment of articles .....	100.00
(9) Articles of merger or share exchange .....	100.00
(10) Articles of dissolution .....	50.00
(11) Articles of revocation of dissolution .....	150.00
(12) Certificate of administrative dissolution .....	No fee
(13) Application for reinstatement following administrative dissolution .....	50.00
(14) Certificate of reinstatement .....	No fee
(15) Certificate of judicial dissolution .....	No fee
(16) Application for certificate of authority .....	300.00
(17) Application for amended certificate of authority .....	300.00
(18) Application for certificate of withdrawal .....	300.00
(19) Certificate of revocation of authority to transact business .....	No fee
(20) Articles of correction .....	30.00
(21) Application for certificate of existence or authorization .....	15.00
(22) Application of domestic corporation to change	



	domicile .....	50.00
(23)	Application of foreign corporation to move domicile to Arkansas .....	300.00
(24)	Any other document required or permitted to be filed by this chapter .....	25.00"

(b)(1) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) each time process is served on him or her under this chapter.

(2) The party to a proceeding causing service of process is entitled to recover the process fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered by electronic means:

DOCUMENT		FEE	PROCESSING FEE
(1)	Articles of incorporation .....	\$ 40.00	.....\$ 5.00
(2)	Application for reservation of corporate name .....	\$ 18.50	.....\$ 4.00
(3)	Certificate of amendment (new code-no shares exchanged) .....	\$ 40.00	.....\$ 5.00
(4)	Notice of transfer of reserved name	\$ 18.50	.....\$ 4.00
(5)	Certificate of amendment (new code-shares exchanged) .....	\$ 80.00	.....\$ 10.00
(6)	Certificate of amendment .....	\$ 40.00	.....\$ 5.00
(7)	Notice of change of registered office or agent or both .....	No fee	
(8)	Application for registration of fictitious name (old code) .....	\$ 18.50	.....\$ 4.00
(9)	Application for fictitious name for domestic corporation .....	\$ 18.50	.....\$ 4.00
(10)	Application for certificate of authority .....	\$ 258.00	.....\$ 12.00

(11) For any other document not listed above, the cost for electronic filing is:

- (A) Four dollars (\$4.00) for the processing fee when the filing fee is \$0 to \$50;
- (B) Five dollars (\$5.00) for the processing fee when the filing fee is \$51 to \$99;
- (C) Ten dollars (\$10.00) for the processing fee when the filing fee is \$100 to \$299; and



(D) Twelve dollars (\$12.00) for the processing fee when the filing fee is \$300 or more.

**History.** Acts 1987, No. 958, § 64-105; 1987 (1st Ex. Sess.), No. 11, § 1; 2001, No. 1395, § 1; 2007, No. 638, § 3; 2007, No. 646, § 1.

**A.C.R.C. Notes.** Subsection (a) is set out above as amended by Acts 2007, No. 638, § 3, effective September 1, 2007. Subdivision (a) of this section was also amended by Acts 2007, No. 646, § 1, to read as follows: “(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of incorporation ..\$	50.00
(2) Application for use of in-distinguishable name .....	No fee
(3) Application for reserved name .....	25.00
(4) Notice of transfer of reserved name .....	25.00
(5) Application for registered name .....	50.00
(6) Application for renewal of registered name .....	25.00
(7) Corporation’s statement of change of registered agent or registered office, or both.....	No fee
(8) Agent’s statement of resignation .....	No fee
(9) Amendment of articles of incorporation .....	50.00
(10) Restatement of articles of incorporation with amendment of articles .....	100.00
(11) Articles of merger or share exchange .....	100.00

(12) Articles of dissolution .....	50.00
(13) Articles of revocation of dissolution .....	150.00
(14) Certificate of administrative dissolution .....	No fee
(15) Application for reinstatement following administrative dissolution .....	50.00
(16) Certificate of reinstatement .....	No fee
(17) Certificate of judicial dissolution .....	No fee
(18) Application for certificate of authority .....	300.00
(19) Application for amended certificate of authority ....	300.00
(20) Application for certificate of withdrawal .....	300.00
(21) Certificate of revocation of authority to transact business .....	No fee
(22) Articles of correction .....	30.00
(23) Application for certificate of existence or authorization .....	15.00
(24) Application of domestic corporation to change domicile .....	50.00
(25) Application of foreign corporation to move domicile to Arkansas .....	300.00
(26) Any other document required or permitted to be filed by this chapter .....	25.00”

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Business Law, 24 U. Ark. Little Rock L. Rev. 407.

4-27-125. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of § 4-27-120, the Secretary of State shall file it.

(b)(1) The Secretary of State files a document by stamping or otherwise endorsing "Filed," together with his or her name and official title and the date and time of receipt, on both the original and the document copy and on the receipt for the filing fee.

(2) After filing a document, except as provided in § 4-27-1510, the Secretary of State shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

1. affect the validity or invalidity of the document in whole or in part;
2. relate to the correctness or incorrectness of information contained in the document;
3. create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**History.** Acts 1987, No. 958, § 64-108; 2007, No. 638, § 4.

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638,

## PART D: DEFINITIONS

### 4-27-141. Notice.

(a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent or to the corporation or its secretary at its principal office shown in its most recent annual franchise tax report or, in the case of a foreign corporation that has not yet delivered an annual franchise tax report, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) when received;

(2) five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed;

(3) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with the section or other provisions of this chapter, those requirements govern.

**History.** Acts 1987, No. 958, § 64-115; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007."

## SUBCHAPTER 2 — INCORPORATION

### SECTION.

4-27-202. Articles of incorporation.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

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### 4-27-202. Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of § 4-27-401;

(2) the number of shares the corporation is authorized to issue and, if such shares are to consist of one (1) class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are without par value;

(3) the information required by § 4-20-105(a);

(4) the name and address of each incorporator; and

(5) the primary purpose or purposes for which the corporation is organized, which is provided to the Secretary of State for informational purposes and shall not, unless specifically stated in the articles of incorporation, limit the broad purposes provided in § 4-27-301.

(b) The articles of incorporation may set forth:

(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(i) specific limitations on the purpose or purposes for which the corporation is organized;



(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders; and

(iv) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

(3) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

(i) for any breach of the director's duty of loyalty to the corporation or its stockholders;

(ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) under § 4-27-833 of this chapter;

(iv) for any transaction from which the director derived an improper personal benefit; or

(v) for any action, omission, transaction, or breach of a director's duty creating any third-party liability to any person or entity other than the corporation or stockholder.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this subsection to a director shall also be deemed to refer to a member of the governing body of a corporation which is not authorized to issue capital stock; and

(4) any provision that under this chapter is required or permitted to be set forth in the bylaws.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

**History.** Acts 1987, No. 958, § 64-202; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 6.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## RESEARCH REFERENCES

**Ark. L. Rev.** A License to Lie, Cheat, and Steal? Restriction or Elimination of Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643.

## 4-27-204. Liability for preincorporation transactions.

## RESEARCH REFERENCES

**Ark. L. Rev.** Comment, Corporate Pre-Organization Liability in an LLC World, 61 Ark. L. Rev. 301.

## CASE NOTES

## ANALYSIS

Conduct Covered.  
Transfers.

**Conduct Covered.**

In a case arising from a performance bond in which a church moved for summary judgment on its claim to pierce the corporate veil, the church had not asserted claims against the officers and directors of insurance company, and there was no evidence as to whether other persons who acted on behalf of the insurance company knew that it was not incorpo-

rated. *Old St. Paul Missionary Baptist Church v. First Nation Ins. Group*, 707 F. Supp. 2d 811 (E.D. Ark. 2010).

**Transfers.**

This section did not support the company's argument that the warranty deed transferred the property to the individual as the business's principal, because the statute did not address the transfer of real property to people purporting to act on behalf of a corporation, while knowing that the corporation did not exist. *Buckeye Ret. Co., LLC v. Walter*, 2012 Ark. App. 257, — S.W.3d — (2012).

## SUBCHAPTER 4 — NAMES

## SECTION.

4-27-406. Notice to registrant regarding use of corporate, fictitious,

or assumed names in violation of trademark.

**4-27-404. Use of fictitious names.**

## CASE NOTES

**Unregistered, Fictitious Names.**

Circuit court erred in dismissing buyers' claim against partners because whether an exterminating company's failure to properly register and whether the partners were individually doing business or signing only in representative capaci-

ties could not be determined until the facts were further developed; because the unregistered, fictitious names of the company were referenced in the writing at issue, the buyers stated a claim against the partners. *Gorman v. Gilliam*, 2010 Ark. App. 118, 374 S.W.3d 117 (2010).

**4-27-406. Notice to registrant regarding use of corporate, fictitious, or assumed names in violation of trademark.**

(a) Neither the reservation of any proposed name, nor the acceptance of the filing of any articles of incorporation, nor the registration of any foreign corporation's name, nor the registration of an assumed or fictitious name shall authorize the use of the corporate name, assumed name, or fictitious name in violation of any rights of another arising under the trademark laws of the United States, this state, or the common law or provide a defense to an action for violation of any such rights.

(b) Upon reserving any proposed corporate name, or upon accepting the filing of any articles of incorporation, or upon registering for any foreign corporation's name, or upon registering any assumed or fictitious name, the Secretary of State shall issue the following notice to the registrant (selecting the appropriate name from each bracket):

"The Secretary of State of Arkansas has [reserved your proposed corporate name; accepted the filing of your articles of incorporation;

registered your corporate name; recorded your assumed or fictitious name]. However, this does not necessarily give you the right to use your [proposed corporate name; corporate name; assumed or fictitious name] in this state if the use violates someone else's trade name, trademark, or service mark rights under the trademark laws of the United States, this state, or the common law. Prior to your use of the name, you are encouraged to research the names and marks of other parties used or registered in this state, or registered in the United States Patent and Trademark Office, or consult an attorney to determine the existence of any conflicting rights."

**History.** Acts 2007, No. 1008, § 1.

## SUBCHAPTER 5 — OFFICE AND AGENT

### SECTION.

4-27-501 — 4-27-504. [Repealed.]

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**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

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### 4-27-501 — 4-27-504. [Repealed.]

**Publisher's Notes.** These sections, concerning registered office and registered agent, change of registered office or registered agent, resignation of registered agent, and service on a corporation, were repealed by Acts 2007, No. 638, § 7.

Section 4-27-501 was derived from Acts 1987, No. 958, § 64-501.

Section 4-27-502 was derived from Acts 1987, No. 958, § 64-502.

Section 4-27-503 was derived from Acts 1987, No. 958, § 64-503.

Section 4-27-504 was derived from Acts 1987, No. 958, § 64-504; 2001, No. 1815, § 1.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## SUBCHAPTER 6 — SHARES AND DISTRIBUTIONS

### D: Distributions

#### SECTION.

4-27-640. Distributions to shareholders.



**PART B: ISSUANCE OF SHARES****4-27-622. Liability of shareholders.****CASE NOTES****Shareholder Not Liable.**

Because the television network failed to allege any facts that would make the communications company liable for the broadcasting company's obligations under an intellectual property agreement, the

district court properly dismissed the television network's claim against the communications company. *Retro TV Network, Inc. v. Luken Communs., LLC*, 696 F.3d 766 (8th Cir. 2012).

**PART D: DISTRIBUTIONS****4-27-640. Distributions to shareholders.**

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a repurchase or reacquisition of shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) The effect of a distribution under subsection (c) of this section is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization or (ii) the date the payment is made if it occurs

more than one hundred twenty (120) days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) If the articles of incorporation or bylaws of an investment company so provide, the board of directors may delegate to a committee of the board of directors, or to the officers of the corporation, the authority to determine the amount of, to declare, and to distribute dividends in accordance with the policies adopted by the board of directors.

**History.** Acts 1987, No. 958, § 64-616; 1989, No. 583, § 4.

**Publisher's Notes.** This section is being set out to reflect a correction in (e)(1).

## SUBCHAPTER 7 — SHAREHOLDERS

### A: Meetings

### SECTION.

#### SECTION.

4-27-703. Court-ordered meeting.

### B: Voting

4-27-720. Shareholders' list for meeting.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

## PART A: MEETINGS

### 4-27-703. Court-ordered meeting.

(a) The circuit court of the county where a corporation's principal office is located or the Pulaski County Circuit Court, if the corporation does not have a principal office in this state, may summarily order a meeting to be held:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under § 4-27-702, if:

(i) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or

direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

**History.** Acts 1987, No. 958, § 64-703; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 8.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## PART B: VOTING

### 4-27-720. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of § 4-27-1602(c), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his or her agent, or attorney to inspect the shareholders' list before or at the meeting or copy the list as permitted by subsection (b) of this section, the circuit court of the county where a corporation's principal office is located or the Pulaski County Circuit Court, if the corporation does not have a principal office in this state, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

**History.** Acts 1987, No. 958, § 64-708; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 9.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."



4-27-722. Proxies.

CASE NOTES

**Cited:** Reynolds Health Care Servs. v. HMNH, Inc., 364 Ark. 168, 217 S.W.3d 797 (2005).

4-27-728. Voting for directors — Cumulative voting.

CASE NOTES

**Cumulative Voting.**

Bank holding company is not included within § 23-48-320, which governs cumulative voting; therefore, cumulative voting was not required in a bank holding company created under the Arkansas Busi-

ness Corporation Act of 1987, § 4-27-101 et seq., because it was not mandated in the articles of incorporation. Bennett v. Lonoke Bancshares, Inc., 356 Ark. 371, 155 S.W.3d 15 (2004).

PART C: VOTING TRUSTS AND AGREEMENTS

4-27-731. Voting agreements.

CASE NOTES

**Cited:** Reynolds Health Care Servs. v. HMNH, Inc., 364 Ark. 168, 217 S.W.3d 797 (2005).

PART D: DERIVATIVE PROCEEDINGS

4-27-740. Procedure in derivative proceedings.

CASE NOTES

**In General.**

Where the claims asserted in a derivative suit brought would, if proven, advance rather than threaten the interests of the corporation, then the corporation,

as a nominal defendant, must remain neutral in the action; thus, an answer filed by defendant directors on behalf of the corporation was stricken. Sobba v. Elmen, 462 F. Supp. 2d 944 (E.D. Ark. 2006).

SUBCHAPTER 8 — DIRECTORS — OFFICERS — MEETINGS —  
STANDARDS OF CONDUCT — INDEMNIFICATION

**A: Board of Directors**

SECTION.

4-27-809. Removal of directors by judicial proceeding.

SECTION.

**C: Standards of Conduct**

4-27-830. General standards for directors.

**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

## **PART A: BOARD OF DIRECTORS**

### **4-27-809. Removal of directors by judicial proceeding.**

(a) The circuit court of the county where a corporation's principal office is located or the Pulaski County Circuit Court, if the corporation does not have a principal office in this state, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholder holding at least ten percent (10%) of the outstanding shares of any class if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation; and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a) of this section, they shall make the corporation a party defendant.

**History.** Acts 1987, No. 958, § 64-809;  
2007, No. 638, § 10.

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638,

## **CASE NOTES**

### **Gross Abuse of Discretion.**

Minority shareholders were removed from the board of directors for gross abuse of discretion where evidence showed that they engaged in acts harmful to the cor-

poration by removing another director in violation of a franchise agreement and attempting to control the finances of the corporation. *Taylor v. Hinkle*, 360 Ark. 121, 200 S.W.3d 387 (2004).

## **PART C: STANDARDS OF CONDUCT**

### **4-27-830. General standards for directors.**

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

**History.** Acts 1987, No. 958, § 64-818.

**Publisher's Notes.** This section is being set out to reflect a correction in (a)(1).

### RESEARCH REFERENCES

**Ark. L. Rev.** A License to Lie, Cheat, and Steal? Restriction or Elimination of Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643.

### CASE NOTES

#### **Subpoena of Records.**

Law firm's motion to quash a subpoena, which sought copies of its invoices for legal services rendered to three corporations, was denied. Plaintiff, who was seeking the records, was entitled to review them because he was a director of all three corporations, the records were relevant to the claims that he asserted in a derivative suit brought on the corporations' behalf,

and reviewing the records was consistent with plaintiff's fiduciary duties under this section to exercise the care that an ordinarily prudent person would exercise under similar circumstances and to act in a manner that was in the corporations' best interests. *Sobba v. Elmen*, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 29172 (E.D. Ark. Apr. 19, 2007).

### PART D: OFFICERS

#### **4-27-842. Standards of conduct for officers.**

### CASE NOTES

#### **Motion to Dismiss.**

Subsequent to entering into a release and retirement agreement with a store's employee, who was acting as a corporate officer, the store discovered that the employee allegedly misappropriated the store's cash and property; the allegations that the employee breached his fiduciary

duty to the corporation, and that the agreement and the release were fraudulently induced, were sufficiently pleaded to withstand the employee's motion to dismiss. *Wal-Mart Stores, Inc. v. Thomas M. Coughlin*, 369 Ark. 365, 255 S.W.3d 424 (2007).



## SUBCHAPTER 10 — AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

### A: Amendment of Articles of Incorporation

#### SECTION.

4-27-1002. Amendment by board of directors.

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**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

### PART A: AMENDMENT OF ARTICLES OF INCORPORATION

#### 4-27-1002. Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to change the information required by § 4-20-105(a);

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholder action.

**History.** Acts 1987, No. 958, § 64-1002; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 11.

**Effective Dates.** Acts 2007, No. 638,

## SUBCHAPTER 11 — CONVERSION AND MERGER

#### SECTION.

4-27-1101. Definitions.

4-27-1102. Conversion.

4-27-1103. Action on plan of conversion  
by converting corporation.

4-27-1104. Filings required for conversion — Effective date.

4-27-1105. Effect of conversion.

4-27-1106. Merger.

#### SECTION.

4-27-1107. Action on plan of merger by  
constituent corporation.

4-27-1108. Merger of subsidiary.

4-27-1109. Filings required for merger —  
Effective date.

4-27-1110. Effect of merger.

4-27-1111. Chapter not exclusive.

**Publisher's Notes.** This subchapter was repealed by Acts 2009, No. 408, § 2. The subchapter was derived from the following sources:

4-27-1101. Acts 1987, No. 958, § 64-1101.

4-27-1102. Acts 1987, No. 958, § 64-1102.

4-27-1103. Acts 1987, No. 958, § 64-1103.

4-27-1104. Acts 1987, No. 958, § 64-1104.

4-27-1105. Acts 1987, No. 958, § 64-1105.

4-27-1106. Acts 1987, No. 958, § 64-1106; 1987 (1st Ex. Sess.), No. 11, § 9.

4-27-1107. Acts 1987, No. 958, § 64-1107.

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

## 4-27-1101. Definitions.

In this subchapter:

(1) "Constituent corporation" means a constituent organization that is a corporation;

(2) "Constituent organization" means an organization that is party to a merger;

(3) "Converted organization" means the organization into which a converting organization converts pursuant to §§ 4-27-1102 through 4-27-1105;

(4) "Converting corporation" means a converting organization that is a corporation;

(5) "Converting organization" means an organization that converts into another organization pursuant to § 4-27-1102;

(6) "Governing statute" of an organization means the statute that governs the organization's internal affairs;

(7) "In a record" means maintained or kept on file by the organization at an office of the organization or with the Secretary of State;

(8)(A) "Organization" means:

(i) A partnership, including a limited liability partnership;

(ii) A limited partnership, including a limited liability limited partnership;

(iii) A limited liability company;

(iv) A business trust;

(v) A corporation; or

(vi) Any other entity that has a governing statute.

(B) "Organization" includes a domestic or foreign organization whether or not the organization is organized for profit;

(9) "Organizational documents" means:

(A) For a domestic or foreign general partnership, its partnership agreement and, if applicable, statement of qualification;

(B) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) For a domestic or foreign limited liability company, its articles of organization and operating agreement, or the comparable records provided for in its governing statute;

(D) For a business trust, its agreement of trust and declaration of trust;

(E) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or the comparable records provided for in its governing statute; and

(F) For any other organization, the records that:

(i) Create the organization;

(ii) Determine the internal governance of the organization; and

(iii) Determine the relations among the organization's owners, members, and interested parties; and

(10) "Surviving organization" means an organization into which one

(1) or more other organizations are merged.

**History.** 2009, No. 408, § 2.

#### **4-27-1102. Conversion.**

(a) An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization under this section and §§ 4-27-1103 through 4-27-1105 and a plan of conversion, if the:

(1) Other organization's governing statute authorizes the conversion and is complied with; and

(2) Conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

(b) A plan of conversion must be in a record and must include the:

(1) Name and form of the organization before conversion;

(2) Name and form of the organization after conversion;

(3) Terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) Organizational documents of the converted organization.

**History.** 2009, No. 408, § 2.

#### **4-27-1103. Action on plan of conversion by converting corporation.**

(a) A plan of conversion may be approved if the:

(1) Board of directors recommends the plan of conversion to the shareholders, unless the board of directors:

(A) Determines that because of a conflict of interest or other special circumstances it should make no recommendation; and

(B) Communicates the basis for its determination at the time the plan of conversion is submitted to the shareholders; and

(2) Shareholders entitled to vote approve the plan.

(b) The board of directors may condition its submission of the proposed conversion on any basis.



(c)(1) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705.

(2) The notice shall:

(A) State that a purpose of the meeting is to consider the plan of conversion; and

(B) Contain or be accompanied by a copy or summary of the plan.

(d) Unless this chapter, the articles of incorporation, or the board of directors acting under subsection (b) of this section require a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by the voting group.

(e) Subject to any contractual rights, until a conversion is filed under § 4-27-1104, a converting corporation may amend the plan or abandon the planned conversion:

(1) As provided in the plan; and

(2) Except as prohibited by the plan, by the same consent required to approve the plan.

**History.** 2009, No. 408, § 2.

#### **4-27-1104. Filings required for conversion — Effective date.**

(a)(1) After a plan of conversion is approved a converting corporation shall file articles of conversion with the Secretary of State.

(2) The articles of conversion shall include:

(A) A statement that the corporation has been converted into another organization;

(B) The name and form of the organization and the jurisdiction of its governing statute;

(C) The date the conversion is effective under the governing statute of the converted organization;

(D) A statement that the conversion was approved as required by this chapter;

(E) A statement that the conversion was approved as required by the governing statute of the converted organization;

(F) A statement confirming that the converted organization has filed a statement appointing an agent for service of process under § 4-20-112 if the converted organization is a foreign organization not authorized to transact business in this state; and

(G)(i) A copy of the plan of conversion; or

(ii) A statement that:

(a) Contains the address of an office of the organization where the plan of conversion is on file; and

(b) A copy of the plan of conversion will be furnished by the converting corporation on request and without cost to any shareholder of the converting corporation.

(b)(1) If the converting organization is not a converting corporation, the converting organization shall file articles of incorporation with the Secretary of State.

(2) The articles of incorporation shall include, in addition to the information required by § 4-27-202:

(A) A statement that the corporation was converted from another organization;

(B) The name and form of the organization and the jurisdiction of its governing statute; and

(C) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

(c) A conversion becomes effective:

(1) If the converted organization is a corporation, when the articles of incorporation take effect; and

(2) If the converted organization is not a corporation, as provided by the governing statute of the converted organization.

**History.** 2009, No. 408, § 2.

#### **4-27-1105. Effect of conversion.**

(a) An organization that has been converted under this subchapter is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting organization remains vested in the converted organization;

(2) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(3) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) Except as otherwise agreed, the conversion does not dissolve a converting corporation under § 4-27-1401 et seq.

(c)(1) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation, if before the conversion the converting corporation was subject to suit in this state on the obligation.

(2) A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the converted organization:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

**History.** 2009, No. 408, § 2.

#### **4-27-1106. Merger.**

(a) A corporation may merge with one (1) or more other constituent organizations under this section and §§ 4-27-1107 through 4-27-1110 and a plan of merger if:

(1) The governing statute of each of the other organizations authorizes the merger;

(2) The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) Each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger shall be in a record and shall include:

(1) The name and form of each constituent organization;

(2) The name and form of the surviving organization;

(3) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(4) Any amendments to be made by the merger to the surviving organization's organizational documents.

**History.** 2009, No. 408, § 2.

#### **4-27-1107. Action on plan of merger by constituent corporation.**

(a) Except as provided in subsection (g) of this section and after adopting a plan of merger, the board of directors of each corporation that is a party to the merger shall submit the plan of merger for approval by its shareholders.

(b) A plan of merger may be approved if the:

(1) Board of directors recommends the plan of merger to the shareholders, unless the board of directors:

(A) Determines that because of a conflict of interest or other special circumstances it should make no recommendation; and

(B) Communicates the basis for its determination at the time the plan of merger is submitted to the shareholders; and

(2) Shareholders entitled to vote approve the plan.

(c) The board of directors may condition its submission of the proposed merger on any basis.

(d)(1) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705.

(2) The notice shall:

(A) State that a purpose of the meeting is to consider the plan of merger; and



(B) Contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the board of directors acting under subsection (c) of this section require a greater vote or a vote by voting groups, the plan of merger to be authorized must be approved by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote, and if by voting group, by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by the voting group.

(f) Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under § 4-27-1004.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ except for amendments enumerated in § 4-27-1002 from its articles before the merger;

(2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares or the interest comparable to shares in an entity other than a corporation, with identical designations, preferences, limitations, and relative rights immediately after the merger;

(3) The number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or by the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(4) The number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or by the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g) of this section:

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions; and

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) Subject to any contractual rights, at any time before articles of merger are filed the planned merger may be abandoned without further shareholder action in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

**History.** 2009, No. 408, § 2.

#### **4-27-1108. Merger of subsidiary.**

(a) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary corporation into itself without approval of the shareholders of the parent corporation or subsidiary corporation.

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(1) The names of the parent corporation and the subsidiary corporation; and

(2) The manner and basis of converting the shares of the subsidiary corporation into:

(A) Shares, obligations, or other securities of the parent corporation or any other corporation; or

(B) Cash or other property.

(c) The parent corporation shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent corporation may not deliver articles of merger to the Secretary of State for filing until at least thirty (30) days after the date the parent corporation mailed a copy of the plan of merger to each shareholder of the subsidiary corporation who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in § 4-27-1002.

**History.** Acts 2009, No. 408, § 2.

#### **4-27-1109. Filings required for merger — Effective date.**

(a) After each constituent organization has approved a merger, articles of merger must be signed by an authorized representative of each constituent organization.

(b) The articles of merger shall include:

(1) The name and form of each constituent organization and the jurisdiction of its governing statute;

(2) The name and form of the surviving organization and the jurisdiction of its governing statute;

(3) The date the merger is effective under the governing statute of the surviving organization;

(4) Any amendments provided for in the plan of merger for the organizational document of the surviving organization;

(5) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(6) A statement confirming that the surviving organization has filed a statement appointing an agent for service of process under § 4-20-112



if the surviving organization is a foreign organization not authorized to transact business in this state;

(7)(A) A copy of the plan of merger; or

(B) A statement that:

(i) Contains the address of an office of the surviving organization where the plan of merger is on file; and

(ii) A copy of the plan of merger will be furnished by the surviving organization on request and without cost to any shareholder, member, partner, or other owner of any constituent organization; and

(8) Any additional information required by the governing statute of any constituent organization.

(c) Each constituent organization shall deliver the articles of merger for filing in the office of the Secretary of State.

(d) A merger becomes effective under this subchapter:

(1) If the surviving organization is a corporation, upon the later of:

(A) Compliance with subsection (c) of this section; or

(B) The date specified in the articles of merger; or

(2) If the surviving organization is not a corporation, as provided by the governing statute of the surviving organization.

**History.** Acts 2009, No. 408, § 2.

#### **4-27-1110. Effect of merger.**

(a) When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against a constituent organization that ceases to exist may continue as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) Except as otherwise agreed, if a constituent corporation ceases to exist, the merger does not dissolve the corporation for the purposes of § 4-27-1401 et seq.; and

(9) Any amendments provided for in the articles of merger for the organizational documents of the surviving organization become effective.

(b)(1) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any



obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation.

(2) A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the surviving organization:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

**History.** Acts 2009, No. 408, § 2.

#### **4-27-1111. Chapter not exclusive.**

This chapter does not preclude an organization from being converted or merged under other law.

**History.** Acts 2009, No. 408, § 2.

### **SUBCHAPTER 13 — DISSENTERS' RIGHTS**

#### **A: Right to Dissent and Obtain Payment for Shares**

SECTION.

#### **C: Judicial Appraisal of Shares**

SECTION.

4-27-1330. Court action.

4-27-1302. Right of dissent.

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**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

#### **PART A: RIGHT TO DISSENT AND OBTAIN PAYMENT FOR SHARES**

#### **4-27-1302. Right of dissent.**

(a) A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

(1) Consummation of a plan of conversion to which the corporation is a party;

(2) Consummation of a plan of merger to which the corporation is a party if:

(A) Shareholder approval is required for the merger by § 4-27-1107 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(B) The corporation is a subsidiary that is merged with its parent under § 4-27-1108;

(3) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(4) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale under court order or a sale for cash under a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

(5) An amendment to the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under § 4-27-604; or

(6) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provide that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this subchapter may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

**History.** Acts 1987, No. 958, § 64-1302; 1987 (1st Ex. Sess.), No. 11, § 11; 2009, No. 408, §§ 3, 9.

**Amendments.** The 2009 amendment, in (a), inserted (a)(1), redesignated the subsequent subdivisions, substituted “§

4-27-1107” for “§ 4-27-1103” in (a)(2)(A), and substituted “§ 4-27-1108” for “§ 4-27-1104” in (a)(2)(B); and made minor punctuation and stylistic changes in (a) and (b).

## PART C: JUDICIAL APPRAISAL OF SHARES

### 4-27-1330. Court action.

(a) If a demand for payment under § 4-27-1328 remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay

each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the circuit court of the county where the corporation's principal office is located or the Pulaski County Circuit Court if the corporation does not have a principal office in this state. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(c) The corporation shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation or (2) for the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under § 4-27-1327.

**History.** Acts 1987, No. 958, § 64-1313; 2007, No. 638, § 13.

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638,

## SUBCHAPTER 14 — DISSOLUTION

### A: Voluntary Dissolution

#### SECTION.

4-27-1407. Unknown claims against dissolved corporation.

### B: Administrative Dissolution

4-27-1420. Grounds for administrative dissolution.

4-27-1421. Procedure for and effect of administrative dissolution.

#### SECTION.

4-27-1422. Reinstatement following administrative dissolution.

4-27-1423. Appeal from denial of reinstatement.

### C: Judicial Dissolution

4-27-1431. Procedure for judicial dissolution.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.



**PART A: VOLUNTARY DISSOLUTION****4-27-1407. Unknown claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located or in a newspaper of general circulation in Pulaski County if the corporation did not have a principal office in this state;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five (5) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five (5) years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under § 4-27-1406;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

**History.** Acts 1987, No. 958, § 64-1407; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
1987 (1st Ex. Sess.), No. 11, § 12; 2007, No. 638, § 14.

**Effective Dates.** Acts 2007, No. 638,

**PART B: ADMINISTRATIVE DISSOLUTION****4-27-1420. Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under § 4-27-1421 to administratively dissolve a corporation if:

(1) the corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(2) the corporation does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(3) the corporation is without a registered agent in this state for sixty (60) days or more;

(4) the corporation does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or has resigned; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

**History.** Acts 1987, No. 958, § 64-1408; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 15.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

#### **4-27-1421. Procedure for and effect of administrative dissolution.**

(a) If the Secretary of State determines that one (1) or more grounds exist under § 4-27-1420 for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 4-27-1405 and notify claimants under §§ 4-27-1406 and 4-27-1407.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**History.** Acts 1987, No. 958, § 64-1409; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 16.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

#### **4-27-1422. Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under § 4-27-1421 may apply to the Secretary of State for reinstatement within two (2) years after the effective date of dissolution. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;



(3) state that the corporation's name satisfies the requirements of § 4-27-401; and

(4) contain one (1) or more certificates from appropriate state taxing authorities reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

**History.** Acts 1987, No. 958, § 64-1410; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 17.

#### 4-27-1423. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he or she shall serve the corporation with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Pulaski County Circuit Court within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

**History.** Acts 1987, No. 958, § 64-1411; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 18.

**Effective Dates.** Acts 2007, No. 638,

### PART C: JUDICIAL DISSOLUTION

#### 4-27-1431. Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the Pulaski County Circuit Court. Venue for a proceeding brought by any other party named in § 4-27-1430 lies in the



county where a corporation's principal office is or was last located or the Pulaski County Circuit Court if the corporation does not have a principal office in this state.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

**History.** Acts 1987, No. 958, § 64-1413; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
1987 (1st Ex. Sess.), No. 11, § 13; 2007, No. 638, § 19.

**Effective Dates.** Acts 2007, No. 638,

## 4-27-1432. Receivership or custodianship.

### CASE NOTES

#### **Powers of Receiver.**

Trial court erred in dismissing claims against a corporation for lack of subject-matter jurisdiction, on the ground that the corporation was in a pending judicial dissolution and receivership, because under subdivision (c)(1)(ii) of this section, the

receiver was authorized to defend in his or her own name as the corporation's receiver in all Arkansas courts. *Reshel v. Moser*, 101 Ark. App. 125, 270 S.W.3d 877 (2008).

**Cited:** *Sims v. Circuit Court*, 368 Ark. 498, 247 S.W.3d 493 (2007).

## SUBCHAPTER 15 — FOREIGN CORPORATIONS

### **A: Certificate of Authority**

#### SECTION.

4-27-1502. Consequences of transacting business without authority.

4-27-1503. Application for certificate of authority.

4-27-1504. Amended certificate of authority.

#### SECTION.

4-27-1507 — 4-27-1509. [Repealed.]

### **C: Revocation of Certificate of Authority**

4-27-1530. Grounds for revocation.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

**PART A: CERTIFICATE OF AUTHORITY****4-27-1501. Authority to transact business required.****CASE NOTES****ANALYSIS**

In General.

Transacting Business in State.

**In General.**

Arkansas Statutory Foreclosure Act in § 18-50-102(a)(2) provides that a bank may be authorized to do business in Arkansas either by state or federal law; the Wingo Act, § 4-27-1501 et seq., specifies that a foreign corporation may obtain authority to transact business in Arkansas by obtaining a certificate from the Arkansas Secretary of State; and the Arkansas banking statutes provide that in some instances an out-of-state bank must obtain a certificate from the Arkansas Bank Commissioner. *JPMorgan Chase Bank, N.A. v. Johnson*, 470 B.R. 829 (Bankr. E.D. Ark. 2012).

**Transacting Business in State.**

Trial court did not err in denying appellant's motion to dismiss for lack of standing on the ground that appellee's Louisiana corporate charter had been revoked at the time it filed its original complaint against appellant for unlawfully detaining property because appellee's activities in Arkansas involved the creation, securing, and collection of debts, as well as the ownership of real and personal property; thus, under subsection (b) of this section, appellee was not "transacting business" in Arkansas and its failure to obtain a certificate of authority did not prevent it from filing suit in Arkansas. *Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc.*, 370 Ark. 220, 258 S.W.3d 374 (2007).

In this action for action for invasion of privacy and intentional infliction of emo-

tional distress, the dismissal of plaintiff's claims against the publisher for lack of personal jurisdiction was reversed and remanded where (1) the fact that defendant publisher contracted to receive monthly sales reports, especially if these reports were to display sales on a state by state basis, would permit an inference that the publisher had reasonable expectations and knowledge that its products were going to be offered in the Arkansas market; and (2) there was also evidence that the publisher was actively involved in marketing plans and promotions of books placed in stores. *Steinbuch v. Cutler*, 518 F.3d 580 (8th Cir. 2008), rehearing denied, — F.3d —, 2008 U.S. App. LEXIS 28282 (8th Cir. Ark. Apr. 10, 2008), cert. denied, *Steinbuch v. Hyperion Books*, — U.S. —, 129 S. Ct. 223, 172 L. Ed. 2d 242 (2008).

In this action for action for invasion of privacy and intentional infliction of emotional distress, the dismissal of plaintiff's claims against one corporate entity was affirmed where (1) the entity argued that it did not contract with the staff member, did not publish the novel, and was not party to the distribution agreement; and (2) plaintiff offered no credible evidence that the entity had any involvement in the publication or distribution of the novel and instead made merely conclusory allegations about the entity's alleged role. *Steinbuch v. Cutler*, 518 F.3d 580 (8th Cir. 2008), rehearing denied, — F.3d —, 2008 U.S. App. LEXIS 28282 (8th Cir. Ark. Apr. 10, 2008), cert. denied, *Steinbuch v. Hyperion Books*, — U.S. —, 129 S. Ct. 223, 172 L. Ed. 2d 242 (2008).

**4-27-1502. Consequences of transacting business without authority.**

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause



of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d)(1)(A) A foreign corporation that transacts business in this state without a certificate of authority shall pay a civil penalty to the state for each year and partial year during which it transacts business in this state without a certificate of authority.

(B) The penalty shall be the total of all fees imposed by this chapter upon a foreign corporation that properly obtains and renews a certificate of authority and all penalties imposed by this chapter for the failure to obtain or renew a certificate of authority.

(2) In addition to the penalty imposed under subdivision (d)(1) of this section, a foreign corporation that transacts business in this state without a certificate of authority shall pay a civil penalty to the state not to exceed five thousand dollars (\$5,000) for each year and partial year during which it transacted business without a certificate of authority, beginning with the date it began transacting business in this state and ending on the date it obtains a certificate of authority.

(3)(A) The penalties imposed by this subsection may be recovered in a suit brought by the Secretary of State.

(B)(i) In addition to any civil penalty, if the court finds that a foreign corporation has transacted business in violation of this chapter, then the court shall issue an injunction restraining the foreign corporation from any further transactions or the exercise of any rights and privileges in this state.

(ii) The injunction shall remain in effect until:

(a) All civil penalties and any interest and court costs assessed by the court have been paid; and

(b) The foreign corporation has complied with the provisions of this subchapter.

(e) The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**History.** Acts 1987, No. 958, § 64-1502;  
2005, No. 1925, § 1.

#### **4-27-1503. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:



(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of § 4-27-1506;

(2) the name of the state or country under whose law it is incorporated;

(3) its date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the information required by § 4-20-105(a); and

(6) the number and par value, if any, of shares of the corporation's capital stock owned or to be owned by residents of this state.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

**History.** Acts 1987, No. 958, § 64-1503; 2007, No. 638, § 20.

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638,

#### 4-27-1504. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) its corporate name;

(2) the period of its duration;

(3) any of the information required by § 4-20-105(a); or

(4) the state or country of its incorporation.

(b) The requirements of § 4-27-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**History.** Acts 1987, No. 958, § 64-1504; 2007, No. 638, § 21.

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638,

#### 4-27-1507 — 4-27-1509. [Repealed.]

**Publisher's Notes.** These sections, concerning the registered office and registered agent, change of registered office or registered agent, and resignation of the registered agent of a foreign corporation, were repealed by Acts 2007, No. 638, § 22. They were derived from the following sources:

4-27-1507. Acts 1987, No. 958, § 64-1507.

4-27-1508. Acts 1987, No. 958, § 64-1508; 1987 (1st Ex. Sess.), No. 11, § 16.

4-27-1509. Acts 1987, No. 958, § 64-1509.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**4-27-1510. Service on foreign corporation.****CASE NOTES****ANALYSIS**

Construction.  
Personal Jurisdiction.

**Construction.**

Subsection (a) of this section does not limit suits against nonresident corporations to claims arising from in-state activities, but rather, it provides for service of process on out-of-state corporations through its registered agent. *Hicks v. Am. Heritage Life Ins. Co.*, 332 F. Supp. 2d 1193 (W.D. Ark. 2004).

Fed. R. Bankr. P. 7004 does not require an acknowledgement of receipt of service for service of summons and a complaint in an adversary proceeding as required by

this section. *Weston v. Ed Fin. Servs., LLC* (in re Weston), 398 B.R. 325 (Bankr. E.D. Ark. 2008).

**Personal Jurisdiction.**

Court denied insurer's motion to dismiss for lack of personal jurisdiction wife's action to recover husband's life insurance benefits because subsection (a) of this section demonstrated that the service agent appointed by the insurer had the authority to receive service for causes of action arising outside of the State of Arkansas; insurer's designation of an agent, therefore, conferred personal jurisdiction in Arkansas. *Hicks v. Am. Heritage Life Ins. Co.*, 332 F. Supp. 2d 1193 (W.D. Ark. 2004).

**PART C: REVOCATION OF CERTIFICATE OF AUTHORITY****4-27-1530. Grounds for revocation.**

The Secretary of State may commence a proceeding under § 4-27-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(2) the foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent in this state for sixty (60) days or more;

(4) the foreign corporation does not file an appropriate notice with the Secretary of State within sixty (60) days of the change or resignation of the foreign corporation's registered agent;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) the Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

**History.** Acts 1987, No. 958, § 64-1512; 1987 (1st Ex. Sess.), No. 11, § 17; 2007, No. 638, § 23.

**Effective Dates.** Acts 2007, No. 638,

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## SUBCHAPTER 16 — RECORDS AND REPORTS

### A: Records

#### SECTION.

4-27-1604. Court-ordered inspection.

### B: Reports

4-27-1622. Annual franchise tax report for Secretary of State.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

## PART A: RECORDS

### 4-27-1602. Inspection of records by shareholders.

#### CASE NOTES

#### Inspection Allowed.

Law firm's motion to quash a subpoena, which sought copies of its invoices for legal services rendered to three corporations, was denied. As a shareholder of the corporations, the party seeking the re-

cords was entitled to examine them pursuant to subsections (b) and (c) of this section. *Sobba v. Elmen*, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 29172 (E.D. Ark. Apr. 19, 2007).

### 4-27-1604. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with § 4-27-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the circuit court of the county where the corporation's principal office is located or the Pulaski County Circuit Court, if the corporation does not have a principal office in this state, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with § 4-27-1602(b) and (c) may apply to the circuit court in the county where the corporation's principal office is located or the Pulaski County Circuit Court, if the corporation does not have a principal office in this state, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.



(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

**History.** Acts 1987, No. 958, § 64-1604; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 24.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## PART B: REPORTS

### 4-27-1622. Annual franchise tax report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual franchise tax report that sets forth:

- (1) the name of the corporation;
- (2) the jurisdiction under which the corporation is incorporated;
- (3) the information required by § 4-20-105(a);
- (4) the address of its principal office, wherever it is located;
- (5) the names of its principal officers;
- (6) the total number of authorized shares, itemized by class and series, if any, within each class;
- (7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and
- (8) such other information as the Secretary of State may specify in a form promulgated pursuant to § 4-27-121(a).

(b) The requirements as to the applicability, use, and filing of the annual franchise tax report shall be as set forth in § 26-54-101 et seq.

**History.** Acts 1987, No. 958, § 64-1607; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 25.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## SUBCHAPTER 17 — TRANSITION PROVISIONS

### SECTION.

4-27-1705. Fees.

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

Acts 2007, No. 646, § 14: July 1, 2007.  
Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any undue hardship to any entity by standardiz-

ing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the

state’s fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

4-27-1705. Fees.

The fees chargeable by the Secretary of State for services under § 4-26-101 et seq. shall be as follows:

(1)	Articles of incorporation .....	\$ 50.00
(2)	Amendment to articles of incorporation .....	50.00
(3)	Articles of merger or consolidation .....	100.00
(4)	Articles of dissolution .....	50.00
(5)	Application for fictitious name .....	25.00
(6)	Application for reserved name .....	25.00
(7)	For any other filing under this chapter with annexed certificate .....	25.00
(8)	For any certificate pursuant to § 4-26-106 or § 4-26-207 or any other certificate .....	25.00
(9)	For furnishing a certified copy of any document, fifty cents (50¢) per page and five dollars (\$5.00) for the certificate thereto	
(10)	For receiving service of process on behalf of a corporation .....	25.00
(11)	For receiving service of process on behalf of individuals .....	10.00

**History.** Acts 1987, No. 958, § 64-1705; 1987 (1st Ex. Sess.), No. 11, § 19; 2007, No. 638, § 26; 2007, No. 646, § 2.

**A.C.R.C. Notes.** This section is set out above as amended by Acts 2007, No. 638, § 26, effective September 1, 2007. This section was also amended by Acts 2007, No. 646, § 2 to read: “The fees chargeable by the Secretary of State for services under § 4-26-101 et seq. shall be as follows:

(1)	Articles of incorporation .....	\$ 50.00
(2)	Amendment to articles of incorporation .....	50.00
(3)	Articles of merger or consolidation .....	100.00
(4)	Corporation’s statement of change of registered agent or office, or both .....	No Fee
(5)	Articles of dissolution .....	50.00

(6)	Application for fictitious name .....	25.00
(7)	Application for reserved name .....	25.00
(8)	For any other filing under this chapter with annexed certificate .....	25.00
(9)	For any certificate pursuant to § 4-26-106 or § 4-26-207 or any other certificate .....	25.00
(10)	For furnishing a certified copy of any document, fifty cents (50¢) per page and five dollars (\$5.00) for the certificate thereto	
(11)	For receiving service of process on behalf of a corporation .....	25.00
(12)	For receiving service of process on behalf of individuals .....	10.00”

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## SUBCHAPTER 18 — SHARE EXCHANGE

### SECTION.

4-27-1801. Share exchange.

4-27-1802. Action on plan of share exchange.

### SECTION.

4-27-1803. Articles of share exchange.

4-27-1804. Effect of share exchange.

### 4-27-1801. Share exchange.

(a) A corporation may acquire all of the outstanding shares of one (1) or more classes or series of another corporation if the board of directors and shareholders if required by § 4-27-1802 of each corporation approve the exchange.

(b) The plan of exchange shall set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the exchange; and

(3) The manner and basis of exchanging the shares to be acquired for:

(A) Shares, obligations, or other securities of the acquiring corporation or any other corporation; or

(B) Cash or other property.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation through a voluntary exchange or otherwise.

**History.** Acts 2009, No. 408, § 4.

### 4-27-1802. Action on plan of share exchange.

(a) After adopting a plan of share exchange, the board of directors of each corporation whose shares will be acquired in the share exchange shall submit the plan of share exchange for approval by its shareholders.

(b) A plan of share exchange may be approved if the:

(1) Board of directors recommends the plan of share exchange to the shareholders, unless the board of directors:

(A) Determines that because of a conflict of interest or other special circumstances it should make no recommendation; and

(B) Communicates the basis for its determination at the time the plan of share exchange is submitted to the shareholders; and

(2) Shareholders entitled to vote approve the plan.

(c) The board of directors may condition its submission of the proposed plan of share exchange on any basis.



(d)(1) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705.

(2) The notice shall:

(A) State that a purpose of the meeting is to consider the plan of share exchange; and

(B) Contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the board of directors acting under subsection (c) of this section require a greater vote or a vote by voting groups, the plan of share exchange to be authorized must be approved by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote and, if by voting group, by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by the voting group.

(f)(1) Separate voting by voting groups is required on a plan of share exchange by each class or series of shares included in the exchange.

(2) Each class or series constitutes a separate voting group.

(g) Subject to any contractual rights, until articles of share exchange are filed the planned share exchange may be abandoned without further shareholder action in accordance with the procedure set forth in the plan of share exchange or, if none is set forth, in the manner determined by the board of directors.

**History.** Acts 2009, No. 408, § 4.

#### **4-27-1803. Articles of share exchange.**

(a) After a plan of share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall file articles of share exchange with the Secretary of State.

(b) The articles of share exchange shall include:

(1)(A) A copy of the plan of share exchange; or

(B) A statement that:

(i) Contains the address of an office of the surviving corporation where the plan of share exchange is on file; and

(ii) A copy of the plan of share exchange will be furnished by the surviving corporation on request and without cost to any shareholder, member, partner, or other owner of any constituent organization;

(2) If shareholder approval was not required, a statement that shareholder approval was required;

(3) If the approval of the shareholders of one (1) or more corporations to the share exchange was required:

(A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(B)(i) The total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan; or

- (ii) The total number of undisputed votes cast for the plan separately by each voting group; and
- (4) A statement that the number of votes cast for the plan by each voting group was sufficient for approval by that voting group.
- (c) A share exchange takes effect upon the effective date of the articles of share exchange.

**History.** Acts 2009, No. 408, § 4.

**4-27-1804. Effect of share exchange.**

When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan and the former holders of the shares are entitled only to:

- (1) The exchange rights provided in the articles of share exchange; or
- (2) The rights of the former holders of the shares under § 4-27-1301 et seq.

**History.** Acts 2009, No. 408, § 4.

**CHAPTER 28**  
**NONPROFIT ORGANIZATIONS**

SUBCHAPTER.

- 2. ARKANSAS NONPROFIT CORPORATION ACT.
- 3. MERGER OR CONSOLIDATION OF NONPROFIT CORPORATIONS.
- 4. SOLICITATION OF CHARITABLE CONTRIBUTIONS.
- 5. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT. [REPEALED]
- 6. REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

**SUBCHAPTER 1 — GENERAL PROVISIONS**

**4-28-104. Audit of nonprofit organization.**

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Business Law, 24 U. Ark. Little Rock L. Rev. 407.

**SUBCHAPTER 2 — ARKANSAS NONPROFIT CORPORATION ACT**

SECTION.

4-28-223. Fees to be paid to Secretary of State.

SECTION.

4-28-225. Conversion to public water authority.

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**Effective Dates.** Acts 2003, No. 1330, § 5: Apr. 14, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the statutes relating to water authorities and related laws need amending in order to better reflect the intent and operation of those laws as originally

drafted and to be consistent with current trends. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 646, § 14: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any undue hardship to any entity by standardizing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

## 4-28-210. Members.

### CASE NOTES

#### In General.

Trial court did not err in ordering county fair and livestock show association, a nonprofit corporation, to revise its bylaws to set forth the process for membership where there was a conflict be-

tween the articles and the bylaws regarding classes of membership. *Dunaway v. Garland County Fair & Livestock Show Ass'n*, 97 Ark. App. 181, 245 S.W.3d 678 (2006).

## 4-28-212. Voting.

### CASE NOTES

**Cited:** *Dunaway v. Garland County Fair & Livestock Show Ass'n*, 97 Ark. App. 181, 245 S.W.3d 678 (2006).

## 4-28-223. Fees to be paid to Secretary of State.

The Secretary of State shall charge and collect the fees provided under § 4-33-122 for filing the articles of incorporation, amendments, and other filings or certificates under this subchapter.

**History.** Acts 1963, No. 176, § 20; A.S.A. 1947, § 64-1920; Acts 1987, No. 1068, § 4; 2007, No. 646, § 3.

## 4-28-225. Conversion to public water authority.

(a) A corporation which meets the definition of a qualified corporation, as defined by § 4-35-103, may adopt a plan to convert its entity status from that of a nonprofit corporation to a water authority pursuant to § 4-35-101 et seq., unless the articles or bylaws require otherwise, if the conversion is approved:



(1) By a majority of the members of the board of directors of the corporation; and

(2) If the corporation has members, by two-thirds ( $\frac{2}{3}$ ) of the votes cast by the members, in person or by proxy, at a regular or special meeting of the members at which a quorum is present.

(b) For purposes of this section and unless the articles or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented in person or by proxy at a meeting of members to constitute a quorum.

**History.** Acts 2003, No. 1330, § 1.

**Cross References.** Water Authority Act, § 4-35-101 et seq.

### CASE NOTES

#### **In General.**

Although the striking of an amendment to a complaint resulted in a loss of the claim that a conversion vote to convert from an association to a public water authority did not pass by the requisite

majority, the trial court did not abuse its discretion since allowing the new allegations so close to trial would have resulted in prejudice. *Williams v. Brushy Island Pub. Water Auth.*, 368 Ark. 219, 243 S.W.3d 903 (2006).

### SUBCHAPTER 3 — MERGER OR CONSOLIDATION OF NONPROFIT CORPORATIONS

#### SECTION.

4-28-308. Merger or consolidation of for-

eign with domestic corporations.

#### **4-28-301. Definition.**

### RESEARCH REFERENCES

**Ark. L. Notes.** Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

#### **4-28-308. Merger or consolidation of foreign with domestic corporations.**

(a) One (1) or more foreign corporations and one (1) or more domestic corporations may be merged or consolidated if the merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized.

(b)(1) In the case of merger, the surviving corporation may be any one (1) of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation.

(2) In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

(c) The merger or consolidation shall be carried out in the following manner:

(1)(A) Each domestic corporation shall comply with the provisions of this subchapter with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under the laws of which the surviving or new corporation is to be governed and the post office address of the registered or principal office of the surviving or new corporation in the state under the laws of which it is to be governed.

(B) However, no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing the merger or consolidation shall receive, at a meeting of members of the domestic corporation called and conducted in the same manner as provided by § 4-28-304, at least two-thirds ( $\frac{2}{3}$ ) of the votes which members present at the meeting in person or by proxy are entitled to cast, and if any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the bylaws, as to the corporation the resolution shall not be adopted unless it shall also receive at least two-thirds ( $\frac{2}{3}$ ) of the votes which members of each such class who are present at the meeting in person or by proxy are entitled to cast. If a domestic corporation has no members or no members having voting rights, the plan of merger or consolidation shall be adopted at a meeting of the board of directors of the corporation upon receiving the vote of a majority of the directors in office;

(2) Each foreign corporation, if it is to transact business in this state, shall file with the Secretary of State of this state within thirty (30) days after the merger or consolidation, as the case may be, shall become effective, a copy of the plan, articles, or other document filed in the state of its incorporation for the purpose of effecting the merger or consolidation, certified by the public officer having custody of the original;

(3) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the Secretary of State of this state a statement confirming that the foreign corporation has filed a statement appointing an agent for service of process under § 4-20-112 and may be served with process under § 4-20-113 if the foreign corporation fails to appoint or maintain a registered agent for service of process; and

(4) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this subchapter with respect to merger or consolidation, and upon issuance by the Secretary of State of this state of the certificate of merger or the certificate of consolidation provided for in this subchapter, the merger or consolidation shall be effected in this state.

(d) The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is a domestic corporation. If the surviving



or new corporation is a foreign corporation, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other states provide otherwise.

**History.** Acts 1983, No. 614, § 7; A.S.A. in (c)(3), deleted (c)(3)(A), rewrote 1947, § 64-1931; Acts 2009, No. 814, § 2. (c)(3)(B), and made a related change.

**Amendments.** The 2009 amendment,

## SUBCHAPTER 4 — SOLICITATION OF CHARITABLE CONTRIBUTIONS

### SECTION.

4-28-412. Prohibited acts.

### 4-28-412. Prohibited acts.

It shall be a violation of this section for:

(1) Any person to make any misrepresentation, either express or implied, during the course of soliciting funds for a charitable organization;

(2) Any charitable organization to engage in any financial transaction that knowingly jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;

(3) Any person to knowingly use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;

(4) Any person to knowingly misrepresent that any other person sponsors or endorses a solicitation;

(5) Any person to knowingly either use the name of a charitable organization or display any emblem, device, or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;

(6) Any charitable organization to knowingly use a name that is the same as or confusingly similar to the name of another charitable organization unless the latter organization consents in writing to its use;

(7) Any charitable organization to represent itself as being associated with another charitable organization without the express written acknowledgment and endorsement of the other charitable organization;

(8) Any person to knowingly make any false or misleading statements on any document required to be filed with the Attorney General;

(9) Any person to fail to substantially comply with the requirements of this subchapter;

(10) Any charitable organization to use the services of an unregistered paid solicitor who is required to register pursuant to this subchapter;

(11) Any paid solicitor to solicit contributions from citizens or entities located in this state on behalf of an unregistered charitable organization; and



(12) Any person to use an Arkansas address, including a return address, in any solicitation unless the:

(A) Charitable organization maintains and staffs an office at that address;

(B) Solicitation discloses in writing immediately proximate to the address located in this state both the address of the charitable organization's actual headquarters and the fact that the address is that of a mail drop box or is located in a mail-handling facility; or

(C) Person, if soliciting by phone, discloses the address of the organization's actual headquarters in addition to any address maintained in this state.

**History.** Acts 1999, No. 1198, § 12;  
2005, No. 257, § 1.

### CASE NOTES

#### In General.

Trial court properly dismissed appellants' claim against a county fair and livestock show association challenging the association's purchase of property and the relocation of its fairground as the association's board did not violate subdivision (2)

of this section; there was no showing that the estimates obtained by the association were not reasonable or accurate. *Dunaway v. Garland County Fair & Livestock Show Ass'n*, 97 Ark. App. 181, 245 S.W.3d 678 (2006).

## SUBCHAPTER 5 — UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

### SECTION.

4-28-501 — 4-28-517. [Repealed.]

### 4-28-501 — 4-28-517. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 2011, No. 202, § 1. The subchapter was derived from the following sources:

- 4-28-501. Acts 1997, No. 858, § 1.
- 4-28-502. Acts 1997, No. 858, § 2.
- 4-28-503. Acts 1997, No. 858, § 3.
- 4-28-504. Acts 1997, No. 858, § 4.
- 4-28-505. Acts 1997, No. 858, § 5.
- 4-28-506. Acts 1997, No. 858, § 6.
- 4-28-507. Acts 1997, No. 858, § 7.

- 4-28-508. Acts 1997, No. 858, § 8.
- 4-28-509. Acts 1997, No. 858, § 9.
- 4-28-510. Acts 1997, No. 858, § 10;
- 2007, No. 638, § 27.
- 4-28-511. Acts 1997, No. 858, § 11.
- 4-28-512. Acts 1997, No. 858, § 12.
- 4-28-513. Acts 1997, No. 858, § 13.
- 4-28-514. Acts 1997, No. 858, § 14.
- 4-28-515. Acts 1997, No. 858, § 15.
- 4-28-516. Acts 1997, No. 858, § 16.
- 4-28-517. Acts 1997, No. 858, § 17.

## SUBCHAPTER 6 — REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

### SECTION.

- 4-28-601. Short title.
- 4-28-602. Definitions.
- 4-28-603. Relation to other law.
- 4-28-604. Governing law.

### SECTION.

- 4-28-605. Legal entity; Perpetual existence; Powers.
- 4-28-606. Ownership and transfer of property.

## SECTION.

- 4-28-607. Statement of authority as to real property.
- 4-28-608. Liability.
- 4-28-609. Assertion and defense of claims.
- 4-28-610. Effect of judgment or order.
- 4-28-611. Appointment of agent to receive service of process.
- 4-28-612. Service of process.
- 4-28-613. Action or proceeding not abated by change.
- 4-28-614. Venue.
- 4-28-615. Member not agent.
- 4-28-616. Approval by members.
- 4-28-617. Meetings of members; Voting, notice, and quorum requirements.
- 4-28-618. Duties of member.
- 4-28-619. Admission, suspension, dismissal, or expulsion of members.
- 4-28-620. Member's resignation.
- 4-28-621. Membership interest not transferable.
- 4-28-622. Selection of managers; Management rights of managers.

## SECTION.

- 4-28-623. Duties of managers.
- 4-28-624. Notice and quorum requirements for meetings of managers.
- 4-28-625. Right of member or manager to information.
- 4-28-626. Distributions prohibited; Compensation and other permitted payments.
- 4-28-627. Reimbursement; Indemnification; Advancement of expenses.
- 4-28-628. Dissolution.
- 4-28-629. Winding up and termination.
- 4-28-630. Mergers.
- 4-28-631. Transition concerning real and personal property.
- 4-28-632. Uniformity of application and construction.
- 4-28-633. Relation to Electronic Signatures in Global and National Commerce Act.
- 4-28-634. Savings clause.
- 4-28-635. [Reserved.]
- 4-28-636. Effective date.

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**Effective Dates.** Acts 2011, No. 913,  
§ 2: Jan. 1, 2012, by its own terms.

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## 4-28-601. Short title.

This subchapter may be cited as the Revised Uniform Unincorporated Nonprofit Association Act.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms on Jan. 1, 2012.

**Effective Dates.** Acts 2011, No. 913,

## 4-28-602. Definitions.

In this subchapter:

(1) "Established practices" means the practices used by an unincorporated nonprofit association without material change during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

(2) "Governing principles" means the agreements, whether oral, in a record, or implied from its established practices, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers. The term includes

any amendment or restatement of the agreements constituting the governing principles.

(3) “Manager” means a person that is responsible, alone or in concert with others, for the management of an unincorporated nonprofit association.

(4) “Member” means a person that, under the governing principles, may participate in the selection of persons authorized to manage the affairs of the unincorporated nonprofit association or in the development of the policies and activities of the association.

(5) “Person” means an individual, corporation, business trust, statutory entity trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(8) “Unincorporated nonprofit association” means an unincorporated organization consisting of two or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes. The term does not include:

(A) a trust;

(B) a marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement;

(C) an organization formed under any other statute that governs the organization and operation of unincorporated associations;

(D) a joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of the property for a nonprofit purpose; or

(E) a relationship under an agreement in a record that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913,

on Jan. 1, 2012.

#### **4-28-603. Relation to other law.**

(a) Principles of law and equity supplement this subchapter unless displaced by a particular provision of it.

(b) A statute governing a specific type of unincorporated nonprofit association prevails over an inconsistent provision in this subchapter, to the extent of the inconsistency.

(c) This subchapter supplements the law of this state that applies to nonprofit associations operating in this state. If a conflict exists, that law applies.



**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-604. Governing law.**

(a) Except as otherwise provided in subsection (b), the law of this state governs the operation in this state of all unincorporated nonprofit associations formed or operating in this state.

(b) Unless the governing principles specify a different jurisdiction, the law of the jurisdiction in which an unincorporated nonprofit association has its main place of activities governs the internal affairs of the association.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-605. Legal entity; Perpetual existence; Powers.**

(a) An unincorporated nonprofit association is a legal entity distinct from its members and managers.

(b) An unincorporated nonprofit association has perpetual duration unless the governing principles specify otherwise.

(c) An unincorporated nonprofit association has the same powers as an individual to do all things necessary or convenient to carry on its purposes.

(d) An unincorporated nonprofit association may engage in profit-making activities but profits from any activities must be used or set aside for the association's nonprofit purposes.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-606. Ownership and transfer of property.**

(a) An unincorporated nonprofit association may acquire, hold, encumber, or transfer in its name an interest in real or personal property.

(b) An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee or a devisee.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-607. Statement of authority as to real property.**

(a) In this section, "statement of authority" means a statement authorizing a person to transfer an interest in real property held in the name of an unincorporated nonprofit association.

(b) An interest in real property held in the name of an unincorporated nonprofit association may be transferred by a person authorized to do so in a statement of authority recorded by the association in the office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) the name of the unincorporated nonprofit association;

(2) the address in this state, including the street address, if any, of the association or, if the association does not have an address in this state, its out-of-state address;

(3) that the association is an unincorporated nonprofit association; and

(4) the name, title, or position of a person authorized to transfer an interest in real property held in the name of the association.

(d) A statement of authority must be executed in the same manner as an affidavit by a person other than the person authorized in the statement to transfer the interest.

(e) A filing officer may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) A document amending, revoking, or canceling a statement of authority or stating that the statement is unauthorized or erroneous must meet the requirements for executing and recording an original statement.

(g) Unless canceled earlier, a recorded statement of authority and its most recent amendment expire five years after the date of the most recent recording.

(h) If the record title to real property is in the name of an unincorporated nonprofit association and the statement of authority is recorded in the office of the county in which a transfer of the property would be recorded, the authority of the person named in the statement to transfer is conclusive in favor of a person that gives value without notice that the person lacks authority.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### 4-28-608. Liability.

(a) A debt, obligation, or other liability of an unincorporated nonprofit association, whether arising in contract, tort, or otherwise:

(1) is solely the debt, obligation, or other liability of the association; and

(2) does not become a debt, obligation, or other liability of a member or manager solely because the member acts as a member or the manager acts as a manager.

(b) A person's status as a member or manager does not prevent or restrict law other than this subchapter from imposing liability on the person or the association because of the person's conduct.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-609. Assertion and defense of claims.**

(a) An unincorporated nonprofit association may sue or be sued in its own name.

(b) A member or manager may assert a claim the member or manager has against the unincorporated nonprofit association. An association may assert a claim it has against a member or manager.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-610. Effect of judgment or order.**

A judgment or order against an unincorporated nonprofit association is not by itself a judgment or order against a member or manager.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-611. Appointment of agent to receive service of process.**

(a) An unincorporated nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

- (1) the name of the unincorporated nonprofit association; and
- (2) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of the unincorporated nonprofit association and by the person appointed as the agent. By signing and acknowledging the statement the person becomes the agent.

(d) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for executing of an original statement. An agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the association.

(e) The Secretary of State may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-612. Service of process.**

In an action or proceeding against an unincorporated nonprofit association, process may be served on an agent authorized by appoint-



ment to receive service of process, on a manager of the association, or in any other manner authorized by the law of this state.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-613. Action or proceeding not abated by change.**

An action or proceeding against an unincorporated nonprofit association does not abate merely because of a change in its members or managers.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-614. Venue.**

Unless otherwise provided by law other than this subchapter, venue of an action against an unincorporated nonprofit association brought in this state is determined under the statutes applicable to an action brought in this state against a corporation.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-615. Member not agent.**

A member is not an agent of the association solely by reason of being a member.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-616. Approval by members.**

(a) Except as otherwise provided in the governing principles, an unincorporated nonprofit association must have the approval of its members to:

- (1) admit, suspend, dismiss, or expel a member;
- (2) select or dismiss a manager;
- (3) adopt, amend, or repeal the governing principles;
- (4) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association's property, with or without the association's goodwill, outside the ordinary course of its activities;
- (5) dissolve under § 4-28-628(a)(2) or merge under § 4-28-630;
- (6) undertake any other act outside the ordinary course of the association's activities; or
- (7) determine the policy and purposes of the association.

(b) An unincorporated nonprofit association must have the approval of the members to do any other act or exercise a right that the governing principles require to be approved by members.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-617. Meetings of members; Voting, notice, and quorum requirements.**

(a) Unless the governing principles provide otherwise:

(1) approval of a matter by members requires an affirmative majority of the votes cast at a meeting of members; and

(2) each member is entitled to one vote on each matter that is submitted for approval by members.

(b) Notice and quorum requirements for member meetings and the conduct of meetings of members are determined by the governing principles.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-618. Duties of member.**

(a) A member does not have a fiduciary duty to an unincorporated nonprofit association or to another member solely by being a member.

(b) A member shall discharge the duties to the unincorporated nonprofit association and the other members and exercise any rights under this subchapter consistent with the governing principles and the obligation of good faith and fair dealing.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-619. Admission, suspension, dismissal, or expulsion of members.**

(a) A person becomes a member and may be suspended, dismissed, or expelled in accordance with the association's governing principles. If there are no applicable governing principles, a person may become a member or be suspended, dismissed, or expelled from an association only by a vote of its members. A person may not be admitted as a member without the person's consent.

(b) Unless the governing principles provide otherwise, the suspension, dismissal, or expulsion of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before the suspension, dismissal, or expulsion.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-620. Member's resignation.**

(a) A member may resign as a member in accordance with the governing principles. In the absence of applicable governing principles, a member may resign at any time.

(b) Unless the governing principles provide otherwise, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or commitment made by the member before resignation.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-621. Membership interest not transferable.**

Except as otherwise provided in the governing principles, a member's interest or any right under the governing principles is not transferable.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-622. Selection of managers; Management rights of managers.**

Except as otherwise provided in this subchapter or the governing principles:

- (1) only the members may select a manager or managers;
- (2) a manager may be a member or a nonmember;
- (3) if a manager is not selected, all members are managers;
- (4) each manager has equal rights in the management and conduct of the association's activities;
- (5) all matters relating to the association's activities are decided by its managers except for matters reserved for approval by members in § 4-28-616; and
- (6) a difference among managers is decided by a majority of the managers.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

**4-28-623. Duties of managers.**

(a) A manager owes to the unincorporated nonprofit association and to its members the fiduciary duties of loyalty and care.

(b) A manager shall manage the unincorporated nonprofit association in good faith, in a manner the manager reasonably believes to be in the best interests of the association, and with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances. A manager may rely in good faith upon any opinion, report, statement, or other information provided by another person that the manager reasonably believes is a competent and reliable source for the information.



(c) After full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty by a manager may be authorized or ratified by a majority of the members that are not interested directly or indirectly in the act or transaction.

(d) A manager that makes a business judgment in good faith satisfies the duties specified in subsection (a) if the manager:

(1) is not interested, directly or indirectly, in the subject of the business judgment and is otherwise able to exercise independent judgment;

(2) is informed with respect to the subject of the business judgment to the extent the manager reasonably believes to be appropriate under the circumstances; and

(3) believes that the business judgment is in the best interests of the unincorporated nonprofit association and in accordance with its purposes.

(e) The governing principles in a record may limit or eliminate the liability of a manager to the unincorporated nonprofit association or its members for damages for any action taken, or for failure to take any action, as a manager, except liability for:

(1) the amount of financial benefit improperly received by a manager;

(2) an intentional infliction of harm on the association or one or more of its members;

(3) an intentional violation of criminal law;

(4) breach of the duty of loyalty; or

(5) improper distributions.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-624. Notice and quorum requirements for meetings of managers.**

Notice and quorum requirements for meetings of managers and the conduct of meetings of managers are determined by the governing principles.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-625. Right of member or manager to information.**

(a) On reasonable notice, a member or manager of an unincorporated nonprofit association may inspect and copy during the unincorporated nonprofit association's regular operating hours, at a reasonable location specified by the association, any record maintained by the association regarding its activities, financial condition, and other circumstances, to the extent the information is material to the member's or manager's rights and duties under the governing principles.

(b) An unincorporated nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing obligations of nondisclosure and safeguarding on the recipient.

(c) An unincorporated nonprofit association may charge a person that makes a demand under this section reasonable copying costs, limited to the costs of labor and materials.

(d) A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies subsections (a) through (c) of this section.

(e) This section shall not affect a record or information that may be accessed by the public under the Freedom of Information Act of 1967, § 25-19-101 et seq.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-626. Distributions prohibited; Compensation and other permitted payments.**

(a) Except as otherwise provided in subsection (b), an unincorporated nonprofit association may not pay dividends or make distributions to a member or manager.

(b) An unincorporated nonprofit association may:

(1) pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered;

(2) confer benefits on a member or manager in conformity with its nonprofit purposes;

(3) repurchase a membership and repay a capital contribution made by a member to the extent authorized by its governing principles; or

(4) make distributions of property to members upon winding up and termination to the extent permitted by § 4-28-629.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-627. Reimbursement; Indemnification; Advancement of expenses.**

(a) Except as otherwise provided in the governing principles, an unincorporated nonprofit association shall reimburse a member or manager for authorized expenses reasonably incurred in the course of the member's or manager's activities on behalf of the association.

(b) An unincorporated nonprofit association may indemnify a member or manager for any debt, obligation, or other liability incurred in the course of the member's or manager's activities on behalf of the associa-



tion if the person seeking indemnification has complied with §§ 4-28-618 and 4-28-623. Governing principles in a record may broaden or limit indemnification.

(c) If a person is made or threatened to be made a party in an action based on that person's activities on behalf of an unincorporated nonprofit association and the person makes a request in a record to the association, a majority of the disinterested managers may approve in a record advance payment, or reimbursement, by the association, of all or a part of the reasonable expenses, including attorney's fees and costs, incurred by the person before the final disposition of the proceeding. To be entitled to an advance payment or reimbursement, the person must state in a record that the person has a good faith belief that the criteria for indemnification in subsection (b) have been satisfied and that the person will repay the amounts advanced or reimbursed if the criteria for payment have not been satisfied. The governing principles in a record may broaden or limit the advance payments or reimbursements.

(d) An unincorporated nonprofit association may purchase insurance on behalf of a member or manager for liability asserted against or incurred by the member or manager in the capacity of a member or manager, whether or not the association has authority under this subchapter to reimburse, indemnify, or advance expenses to the member or manager against the liability.

(e) The rights of reimbursement, indemnification, and advancement of expenses under this section apply to a former member or manager for an activity undertaken on behalf of the unincorporated nonprofit association while a member or manager.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### 4-28-628. Dissolution.

(a) An unincorporated nonprofit association may be dissolved as follows:

(1) if the governing principles provide a time or method for dissolution, at that time or by that method;

(2) if the governing principles do not provide a time or method for dissolution, upon approval by the members;

(3) if no member can be located and the association's operations have been discontinued for at least three years, by the managers or, if the association has no current manager, by its last manager;

(4) by court order; or

(5) under law other than this subchapter.

(b) After dissolution, an unincorporated nonprofit association continues in existence until its activities have been wound up and it is terminated pursuant to § 4-28-629.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.



#### **4-28-629. Winding up and termination.**

Winding up and termination of an unincorporated nonprofit association must proceed in accordance with the following rules:

- (1) All known debts and liabilities must be paid or adequately provided for.
- (2) Any property subject to a condition requiring return to the person designated by the donor must be transferred to that person.
- (3) Any property subject to a trust must be distributed in accordance with the trust agreement.
- (4) Any remaining property must be distributed as follows:
  - (A) as required by law other than this subchapter that requires assets of an association to be distributed to another person with similar nonprofit purposes;
  - (B) in accordance with the association's governing principles or in the absence of applicable governing principles, to the members of the association per capita or as the members direct; or
  - (C) if neither subparagraph (A) nor (B) applies, under the Unclaimed Property Act, § 18-28-201 et seq.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-630. Mergers.**

- (a) In this section:
  - (1) "Constituent organization" means an organization that is merged with one or more other organizations including the surviving organization.
  - (2) "Nonsurviving organization" means a constituent organization that is not the surviving organization.
  - (3) "Organization" means an unincorporated nonprofit association, a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business or statutory trust, corporation, or any other legal or commercial entity having a statute governing its formation and operation. The term includes a for-profit or nonprofit organization.
  - (4) "Surviving organization" means an organization into which one or more other organizations are merged.
- (b) An unincorporated nonprofit association may merge with any organization that is authorized by law to merge with an unincorporated nonprofit association.
- (c) A merger involving an unincorporated nonprofit association is subject to the following rules:
  - (1) Each constituent organization shall comply with its governing law.
  - (2) Each party to the merger shall approve a plan of merger. The plan, which must be in a record, must include the following provisions:
    - (A) the name and form of each organization that is a party to the merger;

(B) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(C) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record;

(D) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record; and

(E) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration except that the plan of merger may not permit members of an unincorporated nonprofit association to receive merger consideration if a distribution of such consideration would not be permitted in the absence of a merger under §§ 4-28-626 and 4-28-629.

(3) The plan of merger must be approved by the members of each unincorporated nonprofit association that is a constituent organization in the merger. If a plan of merger would impose personal liability for an obligation of a constituent or surviving organization on a member of an association that is a party to the merger, the plan may not take effect unless it is approved in a record by the member.

(4) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time before the merger is effective, a constituent organization may amend the plan or abandon the merger as provided in the plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

(5) Following approval of the plan, a merger under this section is effective:

(A) if a constituent organization is required to give notice to or obtain the approval of a governmental agency or officer in order to be a party to a merger, when the notice has been given and the approval has been obtained; and

(B) if the surviving organization:

(i) is an unincorporated nonprofit association, as specified in the plan of merger and upon compliance by any constituent organization that is not an association with any requirements, including any required filings in the office of the Secretary of State, of the organization's governing statute; or

(ii) is not an unincorporated nonprofit association, as provided by the statute governing the surviving organization.

(d) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;



(4) all debts, obligations, or other liabilities of each nonsurviving organization continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any nonsurviving organization may be continued as if the merger had not occurred;

(6) except as prohibited by law other than this subchapter, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) the merger does not affect the personal liability, if any, of a member or manager of a constituent organization for a debt, obligation, or other liability incurred before the merger is effective; and

(9) a surviving organization that is not organized in this state is subject to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state for the debt, obligation, or other liability.

(e) Property held for a charitable purpose under the law of this state by a constituent organization immediately before a merger under this section becomes effective may not, as a result of the merger, be diverted from the objects for which it was given, unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the organization obtains an appropriate order of the Pulaski County Circuit Court specifying the disposition of the property.

(f) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a nonsurviving organization and that takes effect or remains payable after the merger inures to the surviving organization. A trust obligation that would govern property if transferred to the nonsurviving organization applies to property that is transferred to the surviving organization under this section.

**History.** Acts 2011, No. 202, § 2.

§ 2: enactment effective by its own terms

**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-631. Transition concerning real and personal property.**

(a) If, before January 1, 2012, an interest in property was by terms of a transfer purportedly transferred to an unincorporated nonprofit association but under the law of this state the interest did not vest in the association, or in one or more persons on behalf of his association under subsection (b) on January 1, 2012, the interest vests in the association, unless the parties to the transfer have treated the transfer as ineffective.

(b) If before January 1, 2012, an interest in property was by terms of a transfer purportedly transferred to an unincorporated nonprofit association but the interest was vested in one or more persons to hold



the interest for members of the association, on or after January 1, 2012, the persons, or their successors in interest, may transfer the interest to the association in its name, or the association may require the interest be transferred to it in its name.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-632. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-633. Relation to Electronic Signatures in Global and National Commerce Act.**

This subchapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-634. Savings clause.**

This subchapter does not affect an action or proceeding commenced or right accrued before this subchapter takes effect.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

#### **4-28-635. [Reserved.]**

#### **4-28-636. Effective date.**

This subchapter takes effect January 1, 2012.

**History.** Acts 2011, No. 202, § 2. § 2: enactment effective by its own terms  
**Effective Dates.** Acts 2011, No. 913, on Jan. 1, 2012.

## **CHAPTER 29**

## **PROFESSIONAL CORPORATIONS**

### **SUBCHAPTER.**

### **3. MEDICAL CORPORATION ACT.**

### SUBCHAPTER 3 — MEDICAL CORPORATION ACT

#### SECTION.

4-29-302. Definitions.

4-29-313. Foreign medical corporations  
— Certificates of registration — Governance — Licensure.

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**Effective Dates.** Acts 2013, No. 135, § 3: Feb. 20, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that access to medical care is becoming increasingly more difficulty in this state; that difficulties with access to medical care may reach crisis levels as recent changes in federal law increase the demand for medical care without an accompanying increase in the number of medical providers in the state; and that this act is immediately necessary to ensure broad access to medical care by reducing disin-

centives to the entry of medical care providers into Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

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#### 4-29-302. Definitions.

As used in this subchapter:

(1) "Beneficial owner" means an individual who is the grantor and sole trustee of a revocable living trust wherein the individual reserves the unrestricted right to revoke the trust;

(2) "Foreign medical corporation" means a corporation:

(A) Organized under laws other than the laws of this state; and

(B) In which all officers, directors, and shareholders of the corporation are licensed to practice medicine in the state of incorporation;

(3) "Professional service" means any type of professional service that may be legally performed only pursuant to a license or other legal personal authorization, for example: the personal service rendered by certified public accountants, architects, engineers, dentists, doctors, and attorneys at law; and

(4) "Shareholder" means either:

(A) The person in whose name shares are registered in the records of a corporation; or

(B) The beneficial owner of shares of a revocable living trust where the shares are registered in the records of the corporation in the names of the revocable living trust.

**History.** Acts 1961, No. 179, § 1; A.S.A. 1947, § 64-1701; Acts 1997, No. 306, § 2; 2013, No. 135, § 1.

**Amendments.** The 2013 amendment deleted "unless the context otherwise requires" at the end of the introductory

language; and inserted present (2) and redesignated the remaining subsections accordingly.

#### **4-29-309. Certificate of registration — Issuance, renewal, etc.**

##### **CASE NOTES**

##### **Board Members As Government Officers**

Defendant was properly given a six-level sentencing enhancement for the bombing and arson charges because the doctor/victim was an official victim under U.S. Sentencing Guidelines Manual

§ 3A1.2(a), in that the doctor was a member of a state medical board, was targeted by defendant for his participation on the board, and under this section, the board had been assigned its powers by the state legislature. *United States v. Mann*, 701 F.3d 274 (8th Cir. 2012).

#### **4-29-313. Foreign medical corporations — Certificates of registration — Governance — Licensure.**

(a) If a foreign medical corporation complies with this subchapter, the Arkansas State Medical Board may issue a certificate of registration to the foreign medical corporation.

(b) A person who is not licensed to practice medicine shall not participate in the ownership, management, or control of a foreign medical corporation.

(c) A proxy to vote shares of a foreign medical corporation shall not be given to a person who is not licensed to practice medicine.

(d) A physician who is affiliated with a foreign medical corporation shall obtain a license to practice medicine from the board before practicing medicine in Arkansas.

**History.** Acts 2013, No. 135, § 2.

## **CHAPTER 31**

### **FOREIGN INVESTORS**

#### **SUBCHAPTER.**

##### **2. QUALIFICATION TO DO BUSINESS.**

##### **4. FILING PROCEDURE FOR FOREIGN BUSINESS TRUSTS.**

#### **SUBCHAPTER 2 — QUALIFICATION TO DO BUSINESS**

#### **SECTION.**

##### **4-31-204. Actions — Service of process — Venue.**

#### **4-31-204. Actions — Service of process — Venue.**

(a)(1) Any bank, trust company, foreign mutual savings bank, pension fund, foreign mutual savings fund society, mutual banking association, foreign insurance company, or any other type of organization defined in this subchapter and investing funds in Arkansas may sue or



be sued within this state in relation to such mortgages or deeds of trust on real properties, securities, or debts, and service of process may be performed by service upon any custodian or agent appointed within the state.

(2) If no custodian or agent has been appointed, the bank, trust company, foreign mutual savings bank, pension fund, foreign mutual savings fund society, mutual banking association, foreign insurance company, or other type of organization may be served with process under § 4-20-113.

(b) The venue of an action under subsection (a) of this section is:

(1) In the county of the residence of a plaintiff; or

(2) If a subject of the action is land, in the county in which any part of the land is located.

**History.** Acts 1989, No. 947, § 4; 2009, No. 814, § 3.

**Amendments.** The 2009 amendment

rewrote (a)(2), deleted (b), redesignated the subsequent subsection, and rewrote present (b).

## SUBCHAPTER 4 — FILING PROCEDURE FOR FOREIGN BUSINESS TRUSTS

### SECTION.

4-31-402. Filing requirements.

4-31-405. Merger or consolidation.

### SECTION.

4-31-406. Filing fees.

**Effective Dates.** Acts 2007, No. 638, § 70; Sept. 1, 2007.

Acts 2007, No. 646, § 14: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any undue hardship to any entity by standardiz-

ing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

### 4-31-402. Filing requirements.

(a)(1) A business trust, for the purpose of this subchapter, shall be foreign.

(2) A foreign business trust includes every foreign business trust.

(b) Any foreign business trust desiring to transact business in this state shall deliver to the Secretary of State:

(1) A form provided by the Secretary of State's office or an executed copy of the articles, declaration of trust, or trust agreement by which the trust was created and all amendments thereto, or a true copy thereof certified to be such by a trustee of the trust before a notary or by a public official of another state territory or country in whose office an executed copy thereof is on file;

(2) A verified list of the names, residences, and post office addresses of its trustees;

(3) An affidavit setting forth its assumed business name, if any; and

(4) A foreign business trust shall deliver to the Secretary of State the location of its principal office, the information required by § 4-20-105(a), and its irrevocable consent to service of process duly signed by a majority of its trustees to bind the business trust by such irrevocable consent.

(c) When a foreign business trust has complied with the delivery requirements as provided in this section, the Secretary of State, after determining that all requirements have been met, shall file the delivered documents of foreign business trusts and the foreign business trusts may thereupon commence business.

(d) Upon the filing of the form provided by the Secretary of State or the copy of articles, declaration of trust, or trust agreement and the payment of a filing fee in compliance with the laws of the State of Arkansas, the Secretary of State shall issue to the trustee named in the form or articles, declaration of trust, or trust agreement, a certificate showing that the declaration of trust has been on file in the office, whereupon such association shall be authorized to transact business in this state provided that all other applicable laws have been followed.

(e)(1) The articles, declaration of trust, or trust agreement by which any foreign business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to the foreign business trust.

(2) Provided, that no amendment shall be legally effected in the state until a copy thereof has been filed with the Secretary of State.

**History.** Acts 1999, No. 1366, § 2; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 28.

**Effective Dates.** Acts 2007, No. 638, § 1, 2007."

#### **4-31-405. Merger or consolidation.**

(a)(1) Pursuant to an agreement of merger or consolidation, a foreign business trust may merge or consolidate with or into one (1) or more foreign business trusts or other business entities formed or organized or existing under the laws of the state or any other state or the United States or any foreign country or other foreign jurisdiction, with the foreign business trust or other business entity, as the agreement shall provide, being the surviving or resulting business trust or other business entity unless otherwise provided in the governing instrument of a foreign business trust.

(2) A merger or consolidation shall be approved by each business trust which is to merge or consolidate by all of the trustees and the beneficial owners of the business trust.

(b)(1) If a business trust is merging or consolidating under this section, the business trust or other business entity surviving or result-



ing in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State.

(2) The certificate of merger or consolidation shall state:

(A) The name and jurisdiction of formation or organization of each of the business trusts or other business entities which are to merge or consolidate;

(B) That an agreement of merger or consolidation has been approved and executed by each of the business trusts or other business entities which are to merge or consolidate;

(C) The name of the surviving or resulting business trust or other business entity;

(D)(i) The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the certificate of merger or consolidation.

(ii) The effective date can be no later than ninety (90) days after the filing of the original documents;

(E) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting business trust or other business entity and shall state the address thereof;

(F) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting business trust or other business entity on request and without cost to any beneficial owner of any business trust or any person holding an interest in any other business entity which is to merge or consolidate; and

(G) If the surviving or resulting entity is not a business trust or other business entity formed or organized or existing under the laws of the State of Arkansas, that the surviving or resulting entity has filed a statement appointing an agent for service of process under § 4-20-112 and may be served with process under § 4-20-113 if the surviving or resulting entity fails to appoint or maintain a registered agent for service of process.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

(d) A certificate of merger or consolidation shall act as a certificate of cancellation for a foreign business trust which is not the surviving or resulting entity in the merger or consolidation.

(e) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state, all of the rights, privileges, and powers of each of the business trusts and other business entities that have merged or consolidated, and all property, real, personal, and mixed, and all debts due to any business trusts and other business entities, as well as all other things and causes of action belonging to each of the business trusts and other business entities, shall be vested in the surviving or resulting business trust or other



business entity, and shall thereafter be the property of the surviving or resulting business trust or other business entity as they were of each of the business trusts and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state, in any of the business trusts and other business entities, shall not revert or be in any way impaired by reason of this chapter, but all rights of creditors and all liens upon any property of any of the business trusts and other business entities shall be preserved unimpaired, and all debts, liabilities, and duties of each of the business trusts and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting business trust or other business entity and may be enforced against it to the same extent as if debts, liabilities, and duties had been incurred or contracted by it.

**History.** Acts 1999, No. 1366, § 5; 2009, No. 814, § 4. **Amendments.** The 2009 amendment rewrote (b)(2)(G).

4-31-406. Filing fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of business trust .....	\$300.00
(2) Amendment of articles of business trust .....	300.00
(3) Articles of merger .....	100.00
(4) Articles of dissolution .....	300.00
(5) Application for amended certificate of authority.....	300.00
(6) Application for certificate of withdrawal .....	300.00
Any other document required or permitted to be filed	
(7) by this subchapter .....	25.00

(b)(1) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) each time process is served on him or her under this subchapter.

(2) The party to a proceeding causing service of process is entitled to recover the process fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign business trust:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

**History.** Acts 1999, No. 1366, § 6; 2007, No. 638, § 29; 2007, No. 646, § 4. **A.C.R.C. Notes.** This section is set out above as amended by Acts 2007, No. 638, § 29, effective September 1, 2007. Subdivision (a) of this section was also amended by Acts 2007, No. 646, § 4 to read: “The Secretary of State shall collect the follow-

ing fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of business trust .....	\$300.00
Business trust’s statement of change of registered agent or	No
(2) registered office, or both .....	Fee
Agent’s statement of resigna-	No
(3) tion .....	Fee
Amendment of articles of busi-	
(4) ness trust .....	300.00
(5) Articles of merger .....	100.00

(6) Articles of dissolution .....	300.00
Application for amended cer-	
(7) tificate of authority .....	300.00
Application for certificate of	
(8) withdrawal .....	300.00
Any other document required	
or permitted to be filed by this	
(9) subchapter .....	25.00”

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

CHAPTER 32

SMALL BUSINESS ENTITY TAX PASS THROUGH ACT

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
  - 2. FORMATION.
  - 9. DISSOLUTION.
  - 10. FOREIGN LIMITED LIABILITY COMPANIES.
  - 12. CONVERSION AND MERGER.
  - 13. MISCELLANEOUS.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.
- 4-32-105. [Repealed.]
  - 4-32-107. [Repealed.]

- SECTION.
- 4-32-108. Use of fictitious names.

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

4-32-101. Title.

RESEARCH REFERENCES

<b>Ark. L. Rev.</b> A License to Lie, Cheat, and Steal? Restriction or Elimination of Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643. Comment, Corporate Pre-Organization Liability in an LLC World, 61 Ark. L. Rev. 301.	<b>U. Ark. Little Rock L. Rev.</b> Goforth, Why Arkansas Should Adopt the Revised Uniform Limited Liability Company Act, 30 U. Ark. Little Rock L. Rev. 31.
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**4-32-105. [Repealed.]**

**Publisher's Notes.** This section, concerning registered office, registered agent, and service of process, was repealed by Acts 2007, No. 638, § 30. The section was derived from Acts 1993, No. 1003, § 105.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**4-32-107. [Repealed.]**

**Publisher's Notes.** This section, concerning service of process, was repealed by Acts 2007, No. 638, § 31. The section was derived from Acts 1993, No. 1003, § 107.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**4-32-108. Use of fictitious names.**

(a) No limited liability company, domestic or foreign, shall conduct any business in this state under a fictitious name unless it first files with the Secretary of State a form supplied or approved by the Secretary of State giving the following information:

(1) The fictitious name under which business is being or will be conducted by the applicant limited liability company;

(2) A brief statement of the character of business to be conducted under the fictitious name; and

(3) The name of the limited liability company, the state of organization, and location, giving the city and street address, of the registered office in the state of the applicant limited liability company.

(b) Each such form shall be executed, without verification, in duplicate and filed with the Secretary of State. The Secretary of State shall retain one (1) counterpart; and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the limited liability company. However, the Secretary of State shall not accept such filing if the proposed fictitious name is the same as, or confusingly similar to, the name of any domestic corporation, limited liability company, limited partnership, limited liability partnership or any other entity registered with the Secretary of State, or any foreign entity authorized to do business in the state or any name reserved or registered under §§ 4-27-402, 4-27-403, 4-32-104 or 4-47-109.

(c) Copies of such filed forms, certified by the respective filing officers, shall be admitted in evidence where the question of filing may be material.

(d) If, after a filing under this section, the applicant limited liability company is dissolved, or, being a foreign limited liability company, surrenders or forfeits its rights to do business in Arkansas or, whether a domestic or foreign limited liability company, ceases to do business in Arkansas under the specified fictitious name, such limited liability company shall be obligated to file with the Secretary of State a cancellation of its privilege hereunder. If such cancellation is not filed, the Secretary of State, upon satisfactory evidence, may cancel such privilege.



(e) If a limited liability company which has not filed under this section has heretofore or shall hereafter become a party to any contract, deed, conveyance, assignment, or instrument of encumbrance in which such limited liability company is referred to exclusively by a fictitious name, the obligations imposed upon the limited liability company under said instrument and the right sought to be conferred upon third parties thereunder may be enforced against it, but the rights accruing to the limited liability company under said instrument may not be enforced by the limited liability company in the courts of this state until it complies with this section and pays to the Treasurer of State a civil penalty of three hundred dollars (\$300), and in any suit by a limited liability company upon an instrument which identified it exclusively by a fictitious name, the limited liability company shall be required to allege compliance with this section.

(f)(1) Compliance with this section does not give a limited liability company an exclusive right to the use of the fictitious name, and the registration of a fictitious name under this section will not bar the use of the same name as the name of any domestic entity or any foreign entity authorized to do business in this state, but this chapter is not intended to bar any aggrieved party in such a situation from applying for equitable relief under principles of fair trade law.

**History.** Acts 1999, No. 1528, § 1;  
2007, No. 15, § 3.

**4-32-109. Registered name.**

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of assembly, Business Law, 24 U. Ark. Little  
Legislation, 2001 Arkansas General As- Rock L. Rev. 407.

**SUBCHAPTER 2 — FORMATION**

**SECTION.**  
4-32-202. Articles of organization.

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**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

**4-32-201. Formation.****RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Formation of Limited Liability

Company and Addition or Disassociation of Members Thereto. 43 A.L.R.6th 611.

**4-32-202. Articles of organization.**

The articles of organization shall set forth:

(1) A name for the limited liability company that satisfies the requirements of § 4-32-103;

(2) The information required by § 4-20-105(a); and

(3) If management of the limited liability company is vested in a manager or managers, a statement to that effect.

**History.** Acts 1993, No. 1003, § 202; 2001, No. 829, § 1; 2007, No. 638, § 32.

§ 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

**Effective Dates.** Acts 2007, No. 638,

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Business Law, 24 U. Ark. Little Rock L. Rev. 407.

**SUBCHAPTER 3 — RELATIONS OF MEMBERS AND MANAGERS TO PERSONS  
DEALING WITH THE LIMITED LIABILITY COMPANY**

**4-32-301. Agency power of members and managers.****CASE NOTES****Liability.**

In a case alleging breach of contract and breach of fiduciary duty, summary judgment was properly granted to a managing limited liability company's members and the members' respective limited liability companies since there was no privity of contract; the persons and companies at issue were not parties to the operating agreement for a water park limited liability company, and several signatures were as agents for other entities. There was no authority for the proposition that the actions of one corporation could have been imputed to another solely by their common membership and management. K.C. Props. of N.W. Ark., Inc. v. Lowell Inv.

Partners, Llc, 373 Ark. 14, 280 S.W.3d 1 (2008), rehearing denied, K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 268 (Apr. 17, 2008).

Debtor's judgment debt for breach of fiduciary duty was dischargeable because the fiduciary duty found by the state court and this section did not involve the same standards as 11 U.S.C.S. § 523(a)(4) and the creditors' business assets consisting of people, relationships, and efforts did not constitute a “definable res” for purposes of § 523(a)(4). Clear Sky Props. LLC v. Roussel (In re Roussel), 483 B.R. 915 (Bankr. E.D. Ark. 2012).

### 4-32-303. Limited liability company charged with knowledge of or notice to member or manager.

#### RESEARCH REFERENCES

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents. 46 A.L.R.6th 1.

### 4-32-304. Liability of members to third parties.

#### RESEARCH REFERENCES

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Personal Liability of Individual Members and Managers of Limited Liability Company as to Third Parties. 47 A.L.R.6th 1.

**Ark. L. Rev.** Comment, Corporate Pre-Organization Liability in an LLC World, 61 Ark. L. Rev. 301.

#### CASE NOTES

##### ANALYSIS

Fraud.  
Suit Against Other Members.

##### Fraud.

Generally, the owner or agent of a limited liability company is not liable for the debts of that company under this section; however, the protections afforded to a limited liability company do not shield the owner or agent from liability for conduct that would justify a finding of fraud against that person individually. Under Arkansas law, a cause of action for fraud requires proof of five elements: (1) a false representation of material fact; (2) knowledge that the representation is false or that there is insufficient evidence upon which to make the representation; (3) intent to induce action or inaction in reliance upon the representation; (4) justifiable reliance on the representation; and (5) damage suffered as a result of the reliance. *Myers v. Dewese* (In re Dewese), 469 B.R. 314 (Bankr. E.D. Ark. 2012).

##### Suit Against Other Members.

When both the language of this section and its title are read together, it is clear that the Arkansas Legislature has intended to prohibit suit by a third party against one member of a limited-liability company for another member's actions. *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv.*

*Partners, Llc*, 373 Ark. 14, 280 S.W.3d 1 (2008), rehearing denied, *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 268 (Apr. 17, 2008).

Although this section only prohibited a suit by a third party against one member of a limited liability company for another member's actions, a first member of a water park limited liability company had no cause of action against a second member or a manager where they did not commit gross negligence or willful misconduct. The sale of certain property in dispute was not effectuated by the member or the manager of the water park limited liability company. *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, Llc*, 373 Ark. 14, 280 S.W.3d 1 (2008), rehearing denied, *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 268 (Apr. 17, 2008).

Mere fact that a chief operating officer pursued other business ventures did not constitute a breach of the duty of loyalty and the employee's consulting business did not compete with the company in the trucking business or in any way injure the company; the evidence did not support the company's allegation that the damages they sought were proximately caused by the employee's conduct. *DC Xpress, L.L.C. v. Briggs*, 2009 Ark. App. 651, 343 S.W.3d 603 (2009).



**4-32-308. Professional relationship — Personal liability.****RESEARCH REFERENCES**

**Ark. L. Rev.** Comment, Corporate Pre-Organization Liability in an LLC World, 61 Ark. L. Rev. 301.

**4-32-309. Liability of limited liability company to third parties.****RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents. 46 A.L.R.6th 1. Construction and Application of Lim-

ited Liability Company Acts — Issues Relating to Personal Liability of Individual Members and Managers of Limited Liability Company as to Third Parties. 47 A.L.R.6th 1.

**SUBCHAPTER 4 — RIGHTS AND DUTIES OF MEMBERS AND MANAGERS****4-32-402. Duties of managers and members.****RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Derivative Actions and Actions Between Members of Limited Liability Company. 48 A.L.R.6th 1.

**Ark. L. Rev.** A License to Lie, Cheat, and Steal? Restriction or Elimination of Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643.

**CASE NOTES****Suit Against Other Members**

Although § 4-32-304 only prohibited a suit by a third party against one member of a limited liability company for another member's actions, a first member of a water park limited liability company had no cause of action against a second member or a manager where they did not commit gross negligence or willful misconduct. The sale of certain property in dispute was not effectuated by the member or the manager of the water park limited liability company. *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, Llc*, 373 Ark. 14, 280 S.W.3d 1 (2008), rehearing denied, *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC*, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 268 (Apr. 17, 2008).

Where the creditors and debtors were

members of a limited liability company (LLC), although both Arkansas case law and subdivision (2) of this section supported the creation of a fiduciary relationship between members of the LLC and the LLC even in the absence of an express or technical trust, that relationship did not necessarily extend to other members of the LLC. Although the payment by the LLC of the debtor wife's professional dues was not authorized by the operating agreement, the creditors could not, in their own right, claim a fraudulent appropriation that would give rise to embezzlement under 11 U.S.C.S. § 523(a)(4), as they failed to assert a direct injury separate and distinct from any injury suffered by the LLC. *Lewis v. Spivey (In re Spivey)*, 440 B.R. 539 (Bankr. W.D. Ark. 2010).

**4-32-404. Limitation of liability and indemnification of members and managers.**

**RESEARCH REFERENCES**

**Ark. L. Rev.** A License to Lie, Cheat, and Steal? Restriction or Elimination of Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643.

**SUBCHAPTER 7 — OWNERSHIP AND TRANSFER OF PROPERTY**

**RESEARCH REFERENCES**

**Ark. L. Notes.** Goforth, Limited Liability Partnerships: Does Arkansas Need Another Form of Business Enterprise?, 1995 Ark. L. Notes 57.

**SUBCHAPTER 8 — ADMISSION AND WITHDRAWAL OF MEMBERS**

**4-32-801. Admission of members.**

**RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Formation of Limited Liability Company and Addition or Disassociation of Members Thereto. 43 A.L.R.6th 611.

**4-32-802. Events of dissociation.**

**RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Formation of Limited Liability Company and Addition or Disassociation of Members Thereto. 43 A.L.R.6th 611.

**CASE NOTES**

**Bankruptcy.**

Provision of subdivision (a)(4)(B) of this section did not automatically terminate a bankruptcy debtor's membership in a limited liability company (LLC) due to the debtor's bankruptcy since, under 11 U.S.C.S. § 541(c)(1), the debtor's interest in the LLC was bankruptcy estate property regardless of any nonbankruptcy law

providing for such termination conditioned upon the debtor's bankruptcy, and thus subdivision (a)(4)(B) was unenforceable as conflicting with federal law. *Duncan v. Dixie Mgmt. & Inv., Ltd. Partners (In re Dixie Mgmt. & Inv. Ltd. Partners)*, — B.R. —, 2011 Bankr. LEXIS 1686 (Bankr. W.D. Ark. May 9, 2011).

**SUBCHAPTER 9 — DISSOLUTION**

**SECTION.**

**4-32-908.** Unknown claims against dis-

solved limited liability company.

**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

#### **4-32-901. Dissolution.**

##### **RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Dissolution and Winding Up of Affairs of Limited Liability Company. 49 A.L.R.6th 1.

#### **4-32-902. Judicial dissolution.**

##### **RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Dissolution and Winding Up of Affairs of Limited Liability Company. 49 A.L.R.6th 1.

#### **4-32-903. Winding up.**

##### **RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Dissolution and Winding Up of Affairs of Limited Liability Company. 49 A.L.R.6th 1.

##### **CASE NOTES**

**Cited:** Longing Family Revocable Trust v. Snowden, 2013 Ark. App. 81, — S.W.3d — (2013).

#### **4-32-908. Unknown claims against dissolved limited liability company.**

(a) A limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(b) The notice must:

(1) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office is located or in a newspaper of general circulation in Pulaski County if the company does not have a principal office in this state;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within the earlier of five (5) years after the publication of the notice or the



expiration of the applicable period of limitations otherwise provided under law.

(c) If the limited liability company publishes a newspaper notice in accordance with subsection (b) of this section and files articles of dissolution pursuant to § 4-32-906, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the limited liability company within the earlier of the applicable period of limitations otherwise provided under law or five (5) years after the later of the publication date of the newspaper notice or the filing of the articles of dissolution:

- (1) A claimant who did not receive written notice under § 4-32-907; or
- (2) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

- (1) Against the limited liability company, to the extent of its undistributed assets; or
- (2) If the assets have been distributed in liquidation, against a member of the limited liability company to the extent of his or her pro rata share of the claim or the assets of the limited liability company distributed to him or her in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her in liquidation.

**History.** Acts 1993, No. 1003, § 908; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007, No. 638, § 33.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## SUBCHAPTER 10 — FOREIGN LIMITED LIABILITY COMPANIES

### SECTION.

- 4-32-1002. Registration.
- 4-32-1007. Transaction of business without registration.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

Acts 2007, No. 646, § 14: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any undue hardship to any entity by standardizing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

**RESEARCH REFERENCES**

**Ark. L. Notes.** Goforth, Limited Liability Partnerships: Does Arkansas Need Another Form of Business Enterprise?, 1995 Ark. L. Notes 57.

**4-32-1002. Registration.**

Before transacting business in this state, a foreign limited liability company shall register with the Secretary of State by submitting to the Secretary of State an original signed copy of an application for registration as a foreign limited liability company executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall set forth:

(1) The name of the foreign limited liability company and if the company's name is unavailable for use in this state, the name under which it proposes to transact business in this state;

(2) The state or other jurisdiction where formed and the date of its formation;

(3) The information required by § 4-20-105(a);

(4) A statement confirming that the foreign limited liability company has filed a statement appointing an agent for service of process under § 4-20-112 and may be served with process under § 4-20-113 if the foreign limited liability company fails to appoint or maintain a registered agent for service of process;

(5) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company; and

(6) A statement evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in § 4-32-102(5).

**History.** Acts 1993, No. 1003, § 1002; 2007, No. 638, § 34; 2007, No. 646, § 5; 2009, No. 814, § 5.

**Amendments.** The 2009 amendment rewrote (4).

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**4-32-1007. Transaction of business without registration.**

(a) A foreign limited liability company transacting business in this state may not maintain an action, suit, or proceeding in a court of this state until it has registered in this state.

(b) The failure of a foreign limited liability company to register in this state does not:

(1) Impair the validity of any contract or act of the foreign limited liability company;

(2) Affect the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or



(3) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(c) A foreign limited liability company transacting business in this state without registration may be served with process under § 4-20-113 if the foreign limited liability company:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

(d) A foreign limited liability company which transacts business in this state without registration shall be liable to the state for the years or parts thereof during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by this chapter upon that foreign limited liability company had it duly registered and all penalties imposed by this chapter. The Attorney General may bring proceedings to recover all amounts due this state under the provisions of this section.

(e) A foreign limited liability company which transacts business in this state without registration shall be subject to a civil penalty, payable to the state, not to exceed five thousand dollars (\$5,000) for each twelve-month period or part thereof, beginning with the date it began transacting business in this state and ending on the date it becomes registered.

(f) The civil penalty set forth in subsection (e) of this section may be recovered in an action brought within a court by the Attorney General. Upon a finding by the court that a foreign limited liability company has transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transactions of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs which the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this subchapter.

(g) A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely because the limited liability company transacted business in this state without registration.

**History.** Acts 1993, No. 1003, § 1007; 2009, No. 814, § 6.

**Amendments.** The 2009 amendment rewrote (c).

## SUBCHAPTER 11 — SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY

### RESEARCH REFERENCES

**Ark. L. Notes.** Goforth, Limited Liability Partnerships: Does Arkansas Need An-

other Form of Business Enterprise?, 1995 Ark. L. Notes 57.



**4-32-1102. Authority to sue on behalf of limited liability company.**

**RESEARCH REFERENCES**

**ALR.** Construction and Application of Limited Liability Company Acts — Issues Relating to Derivative Actions and Actions Between Members of Limited Liability Company. 48 A.L.R.6th 1.

**SUBCHAPTER 12 — CONVERSION AND MERGER**

SECTION.	SECTION.
4-32-1201. Definitions.	4-32-1206. Merger.
4-32-1202. Conversion.	4-32-1207. Action on plan of merger by constituent limited liability company.
4-32-1203. Action on plan of conversion by converting limited liability company.	4-32-1208. Filings required for merger — Effective date.
4-32-1204. Filings required for conversion — Effective date.	4-32-1209. Effect of merger.
4-32-1205. Effect of conversion.	4-32-1210. Chapter not exclusive.

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**Publisher's Notes.** This subchapter was repealed by Acts 2009, No. 408, § 5. The subchapter was derived from the following sources:

4-32-1201. Acts 1993, No. 1003, § 1201; 1997, No. 479, § 2; 1997, No. 912, § 1.	4-32-1202. Acts 1993, No. 1003, § 1202; 1997, No. 479, § 3.
	4-32-1203. Acts 1993, No. 1003, § 1203.
	4-32-1204. Acts 1993, No. 1003, § 1204.

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**4-32-1201. Definitions.**

- In this subchapter:
- (1) "Constituent limited liability company" means a constituent organization that is a limited liability company;
  - (2) "Constituent organization" means an organization that is party to a merger;
  - (3) "Converted organization" means the organization into which a converting organization converts under §§ 4-32-1202 through 4-32-1205;
  - (4) "Converting limited liability company" means a converting organization that is a limited liability company;
  - (5) "Converting organization" means an organization that converts into another organization under § 4-32-1202;
  - (6) "Governing statute" of an organization means the statute that governs the organization's internal affairs;
  - (7) "In a record" means maintained or kept on file by the organization at an office of the organization or with the Secretary of State;
  - (8)(A) "Organization" means:
    - (i) A partnership, including a limited liability partnership;

(ii) A limited partnership, including a limited liability limited partnership;

(iii) A limited liability company;

(iv) A business trust;

(v) A corporation; or

(vi) Any other entity that has a governing statute.

(B) "Organization" includes a domestic or foreign organization whether or not the organization is organized for profit;

(9) "Organizational documents" means:

(A) For a domestic or foreign general partnership, its partnership agreement and if applicable statement of qualification;

(B) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) For a domestic or foreign limited liability company, its articles of organization and operating agreement or the comparable records provided for in its governing statute;

(D) For a business trust, its agreement of trust and declaration of trust;

(E) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute or the comparable records provided for in its governing statute; and

(F) For any other organization, the records that:

(i) Create the organization;

(ii) Determine the internal governance of the organization; and

(iii) Determine the relations among the organization's owners, members, and interested parties; and

(10) "Surviving organization" means an organization into which one or more other organizations are merged.

**History.** Acts 2009, No. 408, § 5.

#### **4-32-1202. Conversion.**

(a) An organization other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to another organization under this section and §§ 4-32-1203 through 4-32-1205 and a plan of conversion, if the:

(1) Other organization's governing statute authorizes the conversion and is complied with; and

(2) Conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

(b) A plan of conversion must be in a record and must include the:

(1) Name and form of the organization before conversion;

(2) Name and form of the organization after conversion; and

(3) Terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) Organizational documents of the converted organization.

**History.** Acts 2009, No. 408, § 5.

**4-32-1203. Action on plan of conversion by converting limited liability company.**

(a) Unless otherwise provided in writing in an operating agreement, a plan of conversion must be consented to by more than one-half (1/2) by number of the members of a converting limited liability company.

(b) Subject to any contractual rights, until a conversion is filed under § 4-32-1204, a converting limited liability company may amend the plan or abandon the planned conversion:

(1) As provided in the plan; and

(2) Except as prohibited by the plan, by the same consent required to approve the plan.

**History.** Acts 2009, No. 408, § 5.

**4-32-1204. Filings required for conversion — Effective date.**

(a)(1) After a plan of conversion is approved, a converting limited liability company shall file articles of conversion with the Secretary of State.

(2) The articles of conversion shall include:

(A) A statement that the limited liability company has been converted into another organization;

(B) The name and form of the converted organization and the jurisdiction of its governing statute;

(C) The date the conversion is effective under the governing statute of the converted organization;

(D) A statement that the conversion was approved as required by this chapter;

(E) A statement that the conversion was approved as required by the governing statute of the converted organization;

(F) A statement confirming that the converted organization has filed a statement appointing an agent for service of process under § 4-20-112 if the converted organization is a foreign organization not authorized to transact business in this state; and

(G)(i) A copy of the plan of conversion; or

(ii) A statement that:

(a) Contains the address of an office of the organization where the plan of conversion is on file; and

(b) A copy of the plan of conversion will be furnished by the converting organization on request and without cost to any shareholder of the converting organization.

(b)(1) If the converting organization is not a converting limited liability company, the converting organization shall file articles of organization with the Secretary of State.



(2) The articles of organization shall include, in addition to the information required by § 4-32-202:

(A) A statement that the limited liability company was converted from another organization;

(B) The name and form of the converting organization and the jurisdiction of its governing statute; and

(C) A statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(c) A conversion becomes effective:

(1) If the converted organization is a limited liability company, when the articles of organization take effect; and

(2) If the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

**History.** Acts 2009, No. 408, § 5.

#### **4-32-1205. Effect of conversion.**

(a) An organization that has been converted under this subchapter is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting organization remains vested in the converted organization;

(2) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(3) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) Except as otherwise agreed, the conversion does not dissolve a converting limited liability company under § 4-32-901 et seq.

(c)(1) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before the conversion the converting limited liability company was subject to suit in this state on the obligation.

(2) A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the converted organization:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

**History.** Acts 2009, No. 408, § 5.

**4-32-1206. Merger.**

(a) A limited liability company may merge with one (1) or more other constituent organizations under this section and §§ 4-32-1207 through 4-32-1209 and a plan of merger, if:

(1) The governing statute of each of the other organizations authorizes the merger;

(2) The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) Each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger shall be in a record and shall include:

(1) The name and form of each constituent organization;

(2) The name and form of the surviving organization;

(3) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(4) Any amendments to be made by the merger to the surviving organization's organizational documents.

**History.** Acts 2009, No. 408, § 5.

**4-32-1207. Action on plan of merger by constituent limited liability company.**

(a) Unless otherwise provided in writing in an operating agreement, a plan of merger must be consented to by more than one-half (1/2) by number of the members of a constituent limited liability company.

(b) Subject to any contractual rights, until articles of merger are filed under § 4-32-1208 a constituent limited liability company may amend the plan or abandon the planned merger:

(1) As provided in the plan; and

(2) Except as prohibited by the plan, with the same consent required to approve the plan.

**History.** Acts 2009, No. 408, § 5.

**4-32-1208. Filings required for merger — Effective date.**

(a) After each constituent organization has approved a merger, articles of merger must be signed by an authorized representative of each constituent organization and filed with the Secretary of State.

(b) The articles of merger shall include:

(1) The name and form of each constituent organization and the jurisdiction of its governing statute;

(2) The name and form of the surviving organization and the jurisdiction of its governing statute;

(3) The date the merger is effective under the governing statute of the surviving organization;



(4) Any amendments provided for in the plan of merger for the organizational document of the surviving organization;

(5) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(6) A statement confirming that the surviving organization has filed a statement appointing an agent for service of process under § 4-20-112 if the surviving organization is a foreign organization not authorized to transact business in this state;

(7)(A) A copy of the plan of merger; or

(B) A statement that:

(i) Contains the address of an office of the surviving organization where the plan of merger is on file; and

(ii) A copy of the plan of merger will be furnished by the surviving organization on request and without cost to any shareholder, member, partner, or other owner of any constituent organization; and

(8) Any additional information required by the governing statute of any constituent organization.

(c) A merger becomes effective under this subchapter:

(1) If the surviving organization is a limited liability company, upon the later of:

(A) Compliance with subsection (a) of this section; or

(B) The date specified in the articles of merger; or

(2) If the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

**History.** Acts 2009, No. 408, § 5.

#### **4-32-1209. Effect of merger.**

(a) When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against a constituent organization that ceases to exist may continue as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) Except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company under § 4-32-901 et seq.; and



(9) Any amendments provided for in the articles of merger for the organizational documents of the surviving organization become effective.

(b)(1) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation.

(2) A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the surviving organization:

(A) Fails to appoint an agent for service of process under § 4-20-112;

(B) No longer has an agent for service of process; or

(C) Has an agent for service of process that cannot with reasonable diligence be served.

**History.** Acts 2009, No. 408, § 5.

#### **4-32-1210. Chapter not exclusive.**

This chapter does not preclude an entity from being converted or merged under other law.

**History.** Acts 2009, No. 408, § 5.

### **SUBCHAPTER 13 — MISCELLANEOUS**

#### **SECTION.**

4-32-1301. Filing, service, and copying fees.

#### **SECTION.**

4-32-1313. Tax status.

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**Effective Dates.** Acts 2003, No. 965, § 3: effective for tax years beginning on and after January 1, 2003.

Acts 2007, No. 638, § 70: Sept. 1, 2007.

Acts 2007, No. 646, § 14: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any un-

due hardship to any entity by standardizing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

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#### **4-32-1301. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of organization .....	\$ 50.00
(2) Application for use of indistinguishable name .....	25.00
(3) Application for reserved name .....	25.00
(4) Notice of transfer of reserved name .....	25.00
(5) Amendment of articles of organization .....	25.00
(6) Restatement of articles of organization with amendment of articles of organization .....	25.00
(7) Articles of merger or share exchange .....	50.00
(8) Articles of dissolution .....	50.00
(9) Certificate of judicial dissolution .....	No fee
(10) Application for certificate of authority by foreign limited liability company .....	300.00
(11) Application for amended certificate of authority by foreign limited liability company .....	300.00
(12) Application for certificate of withdrawal by foreign limited liability company .....	No fee
(13) Certificate of revocation of authority to transact business .....	No fee
(14) Articles of correction .....	30.00
(15) Application for certificate of existence or authorization by domestic limited liability company .....	15.00
(16) Any other document required or permitted to be filed by this chapter .....	25.00

(b)(1) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) each time process is served on him or her under this chapter.

(2) The party to a proceeding causing service of process is entitled to recover the process fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her by electronic means:

DOCUMENT	FEE	PROCESSING FEE
(1) Articles of organization for domestic limited liability company .....	\$ 40.00	....\$ 5.00
(2) Certificate of amendment to articles of organization for a domestic		

	limited liability company .....	\$ 18.50	....\$ 4.00
(3)	Application for reservation of		
		No	
	limited liability company name .....	Fee	....No Fee
(4)	Notice of transfer of reserved name	\$ 18.50	....\$ 4.00
(5)	Application for certificate of		
	registration of foreign limited		
	liability company .....	\$ 258.00	....\$ 12.00
(6)	Application for amended certificate		
	of authority by foreign limited		
	liability company .....	\$ 258.00	....\$ 12.00
(7)	Application for fictitious name for		
	foreign limited liability company ....	\$ 18.50	....\$ 4.00
(8)	For any other document not listed above, the cost for electronic		
	filing is:		
	(A) Four dollars (\$4.00) for the processing fee when the filing fee		
	is \$0 to \$ 50;		
	(B) Five dollars (\$5.00) for the processing fee when the filing fee		
	is \$ 51 to \$ 99;		
	(C) Ten dollars (\$10.00) for the processing fee when the filing fee		
	is \$ 100 to \$ 299; and		
	(D) Twelve dollars (\$12.00) for the processing fee when the filing		
	fee is \$300 or more.		

**History.** Acts 1993, No. 1003, § 1302; 2001, No. 1395, § 2; 2007, No. 638, § 35; 2007, No. 646, § 6.

**A.C.R.C. Notes.** This section is set out above as amended by Acts 2007, No. 638, § 35, effective September 1, 2007. Subdivisions (a) and (d) were also amended by Acts 2007, No. 646, § 6 to read as follows: “(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of organization ....	\$ 50.00
(2) Application for use of in-	
distinguishable name .....	25.00
(3) Application for reserved	
name .....	25.00
(4) Notice of transfer of re-	
served name .....	25.00
(5) Statement of change of	
registered agent or regis-	No
tered office, or both	Fee
(6) Agent’s statement of resig-	No
nation .....	Fee

DOCUMENT	FEE
(7) Amendment of articles of	
organization .....	25.00
(8) Restatement of articles of	
organization with amend-	
ment of articles of organi-	
zation .....	25.00
(9) Articles of merger or share	
exchange .....	50.00
(10) Articles of dissolution .....	50.00
(11) Certificate of judicial disso-	
lution .....	No fee
(12) Application for certificate	
of authority by foreign lim-	
ited liability company .....	300.00
(13) Application for amended	
certificate of authority by	
foreign limited liability	
company .....	300.00
(14) Application for certificate	
of withdrawal by foreign	
limited liability company ..	No fee
(15) Certificate of revocation of	
authority to transact busi-	
ness .....	No fee



DOCUMENT	FEE			Notice of transfer of re-
(16) Articles of correction .....	30.00			(5) served name .....\$ 18.50 \$ 4.00
Application for certificate of existence or authorization by domestic limited				Application for certificate of registration of foreign limited liability
(17) liability company .....	15.00			(6) company .....\$.258.00 \$ 12.00
Any other document required or permitted to be				Application for amended certificate of authority by foreign limited liability company .....
(18) filed by this chapter .....	25.00			(7) .....\$.258.00 \$ 12.00
“d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her by electronic means:				
		PROC-		Application for fictitious name for foreign limited
		ESS-		(8) liability company .....\$ 18.50 \$ 4.00
		ING		For any other document not listed
				(9) above, the cost for electronic filing is:

DOCUMENT	FEE	FEE		
Articles of organization for domestic limited liability company .....	\$ 40.00	\$ 5.00		(A) Four dollars (\$ 4.00) for the processing fee when the filing fee is \$0 to \$ 50;
Certificate of amendment to articles of organization for a domestic limited liability company .....	\$ 18.50	\$ 4.00		(B) Five dollars (\$ 5.00) for the processing fee when the filing fee is \$ 51 to \$ 99;
Notice of change of registered office or agent or both for limited liability company.....	No Fee	No Fee		(C) Ten dollars (\$ 10.00) for the processing fee when the filing fee is \$ 100 to \$ 299; and
Application for reservation of limited liability company name .....	\$ 18.50	\$ 4.00		(D) Twelve dollars (\$ 12.00) for the processing fee when the filing fee is \$ 300 or more.”

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Business Law, 24 U. Ark. Little Rock L. Rev. 407.

4-32-1304. Rules of construction.

RESEARCH REFERENCES

Ark. L. Rev. A License to Lie, Cheat, and Steal? Restriction or Elimination of Fiduciary Duties in Arkansas Limited Liability Companies, 60 Ark. L. Rev. 643.

4-32-1313. Tax status.

A limited liability company and its member or members shall be classified and taxed for Arkansas income tax purposes in the same manner as the limited liability company and its member or members are classified and taxed for federal income tax purposes.

**History.** Acts 1993, No. 1003, § 1313;  
2003, No. 965, § 1.

**CHAPTER 33**  
**THE ARKANSAS NONPROFIT CORPORATION ACT OF**  
**1993**

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ORGANIZATION.
- 3. PURPOSES AND POWERS.
- 5. OFFICE AND AGENT.
- 7. MEMBERS' MEETINGS AND VOTING.
- 8. DIRECTORS AND OFFICERS.
- 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.
- 11. MERGER.
- 14. DISSOLUTION.
- 15. FOREIGN CORPORATIONS.
- 16. CONVERSION TO A PUBLIC WATER AUTHORITY.

**SUBCHAPTER 1 — GENERAL PROVISIONS**

**B: Filing Documents**

SECTION.

SECTION.

- 4-33-122. Filing, service, and copying fees.
- 4-33-125. Filing duty of Secretary of State.
- 4-33-126. Appeal from Secretary of State's refusal to file document.

**C: Secretary of State**

- 4-33-131. Annual disclosure of information.
- 4-33-132 — 4-33-139. [Reserved.]

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

Acts 2007, No. 646, § 14: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that business entities are presently paying different fees for similar services from the Secretary of State; that this act will alleviate any undue hardship to any entity by standardiz-

ing business and commercial filing fees; and that this act is immediately necessary to aid the recordkeeping and accounting functions of the Secretary of State and should take effect at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

PART A — SHORT TITLE AND APPLICATIONS

4-33-101. Short title.

RESEARCH REFERENCES

Ark. L. Notes. Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

PART B — FILING DOCUMENTS

4-33-122. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
(1) Articles of incorporation .....	\$50.00
(2) Application for use of indistinguishable name .	No fee
(3) Application for reserved name .....	\$25.00
(4) Notice of transfer of reserved name .....	\$25.00
(5) Application for registered name .....	\$50.00
(6) Application for renewal of registered name ....	\$25.00
(7) Amendment of articles of incorporation .....	\$50.00
(8) Restatement of articles of incorporation with amendments .....	\$100.00
(9) Articles of merger .....	\$100.00
(10) Articles of dissolution .....	\$50.00
(11) Articles of revocation of dissolution .....	\$150.00
(12) Certificate of administrative dissolution .....	No fee
(13) Application for reinstatement following administrative dissolution .....	\$50.00
(14) Certificate of reinstatement .....	No fee
(15) Certificate of judicial dissolution .....	No fee
(16) Application for certificate of authority .....	\$300.00
(17) Application for amended certificate of authority .....	\$300.00
(18) Application for certificate of withdrawal .....	\$300.00
(19) Certificate of revocation of authority to transact business .....	No fee
(20) Articles of correction .....	\$30.00
(21) Application for certificate of existence or authorization .....	\$15.00
(22) Any other document required or permitted to be filed by this chapter .....	\$25.00



(b)(1) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) upon being served with process under this chapter.

(2) The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her by electronic means:

DOCUMENT	FEE	PROCESS- ING FEE
(1) Articles of incorporation for domestic non-profit corporation .....	\$ 40.00	....\$ 5.00
(2) Certificate of amendment of a non-profit corporation .....	\$ 40.00	....\$ 5.00
(3) Articles of dissolution of a non-profit corporation .....	\$ 40.00	....\$ 5.00
(4) Notice of change of registered office or agent or both.....	No Fee	....No Fee
(5) Application for foreign non-profit corporation seeking to do business in Arkansas .....	\$258.00	....\$12.00
(6) For any other document not listed above, the cost for electronic filing is:		
(A) Four dollars (\$4.00) for the processing fee when the filing fee is \$0 to \$50;		
(B) Five dollars (\$5.00) for the processing fee when the filing fee is \$51 to \$99;		
(C) Ten dollars (\$10.00) for the processing fee when the filing fee is \$100 to \$299; and		
(D) Twelve dollars (\$12.00) for the processing fee when the filing fee is \$300 or more.		

**History.** Acts 1993, No. 1147, § 122; 2001, No. 1395, § 4; 2007, No. 638, § 36; 2007, No. 646, § 7.

The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

**A.C.R.C. Notes.** Subsection (a) is set out above as amended by Acts 2007, No. 638, § 36, effective September 1, 2007. Subdivision (a) was also amended by Acts 2007, No. 646, § 7, to read as follows: “(a)

DOCUMENT	FEE
(1) Articles of incorporation ..	\$50.00

(2)	Application for use of indistinguishable name .....	No fee	(15)	Application for reinstatement following administrative dissolution .....	\$50.00
(3)	Application for reserved name .....	\$25.00	(16)	Certificate of reinstatement .....	No fee
(4)	Notice of transfer of reserved name .....	\$25.00	(17)	Certificate of judicial dissolution .....	No fee
(5)	Application for registered name .....	\$50.00	(18)	Application for certificate of authority .....	\$300.00
(6)	Application for renewal of registered name .....	\$25.00	(19)	Application for amended certificate of authority ....	\$300.00
(7)	Corporation's statement of change of registered agent or registered office, or both.....	No Fee	(20)	Application for certificate of withdrawal .....	\$300.00
(8)	Agent's statement of resignation .....	No Fee	(21)	Certificate of revocation of authority to transact business .....	No fee
(9)	Amendment of articles of incorporation .....	\$50.00	(22)	Articles of correction .....	\$30.00
(10)	Restatement of articles of incorporation with amendments .....	\$100.00	(23)	Application for certificate of existence or authorization .....	\$15.00
(11)	Articles of merger .....	\$100.00	(24)	Any other document required or permitted to be filed by this chapter. ....	\$25.00"
(12)	Articles of dissolution ....	\$50.00	<b>Effective Dates.</b> Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."		
(13)	Articles of revocation of dissolution .....	\$150.00			
(14)	Certificate of administrative dissolution .....	No fee			

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Business Law, 24 U. Ark. Little Rock L. Rev. 407.

4-33-125. Filing duty of Secretary of State.

- (a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of § 4-33-120, the Secretary of State shall file it.
- (b) The Secretary of State files a document by stamping or otherwise endorsing "Filed," together with the Secretary of State's name and official title and the date and time of receipt, on both the original and the document copy and on the receipt for the filing fee. After filing a document, except as provided in § 4-33-1510, the Secretary of State shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.
- (c) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

- (1) affect the validity or invalidity of the document in whole or in part;
- (2) relate to the correctness or incorrectness of information contained in the document; or
- (3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**History.** Acts 1993, No. 1147, § 125; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 37.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

#### **4-33-126. Appeal from Secretary of State's refusal to file document.**

(a) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the circuit court in the county where the corporation's principal office is located or the Pulaski County Circuit Court if the corporation does not have a principal office in this state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**History.** Acts 1993, No. 1147, § 126; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 38.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

### **PART C — SECRETARY OF STATE**

#### **4-33-131. Annual disclosure of information.**

Each nonprofit domestic corporation, nonprofit foreign corporation, and nonprofit corporation organized under § 4-28-101 et seq., authorized to transact business in this state shall annually file with the Secretary of State by August 1 a statement that sets forth:

- (1) The name of the corporation;
- (2) The corporation's jurisdiction of incorporation;
- (3) The name and address of the corporation's registered agent for service of process;
- (4) The address of the corporation's principal office;
- (5) The names of the corporation's principal officers; and
- (6) The names and addresses of the corporation's directors.

**History.** Acts 2007, No. 569, § 1.



**4-33-132 — 4-33-139. [Reserved.]****SUBCHAPTER 2 — ORGANIZATION****SECTION.**

4-33-202. Articles of incorporation.

**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

**4-33-202. Articles of incorporation.**

- (a) The articles of incorporation must set forth:
  - (1) a corporate name for the corporation that satisfies the requirements of § 4-33-401;
  - (2) one (1) of the following statements:
    - (i) this corporation is a public benefit corporation;
    - (ii) this corporation is a mutual benefit corporation; or
    - (iii) this corporation is a religious corporation.
  - (3) the information required by § 4-20-105(a);
  - (4) the name and address of each incorporator;
  - (5) whether or not the corporation will have members; and
  - (6) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
  - (1) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
  - (2) the names and addresses of the individuals who are to serve as the initial directors;
  - (3) provisions not inconsistent with law regarding:
    - (i) managing and regulating the affairs of the corporation;
    - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors and members (or any class of members); and
    - (iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.
  - (4) any provision that under this chapter is required or permitted to be set forth in the bylaws.
- (c) Each incorporator named in the articles must sign the articles.
- (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

**History.** Acts 1993, No. 1147, § 202;  
2007, No. 638, § 39.

§ 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**Effective Dates.** Acts 2007, No. 638,

**SUBCHAPTER 3 — PURPOSES AND POWERS**

## SECTION.

4-33-304. Ultra vires.

**4-33-302. General powers.****RESEARCH REFERENCES**

**Ark. L. Notes.** Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

**4-33-304. Ultra vires.**

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the Attorney General.

**History.** Acts 1993, No. 1147, § 304.

**Publisher's Notes.** This section is being set out to reflect a correction in (a).

**SUBCHAPTER 5 — OFFICE AND AGENT**

## SECTION.

4-33-501 — 4-33-504. [Repealed.]

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

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**4-33-501 — 4-33-504. [Repealed.]**

**Publisher's Notes.** These sections, concerning registered office and registered agent, change of registered office or registered agent, resignation of a registered

agent, and service on a corporation, were repealed by Acts 2007, No. 638, § 40.

Section 4-33-501 was derived from Acts 1993, No. 1147, § 501.

Section 4-33-502 was derived from Acts 1993, No. 1147, § 502.

Section 4-33-503 was derived from Acts 1993, No. 1147, § 503.

Section 4-33-504 was derived from Acts 1993, No. 1147, § 504; 2001, No. 749, § 1.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## SUBCHAPTER 7 — MEMBERS' MEETINGS AND VOTING

### A: Meetings and Action Without Meetings

#### SECTION.

4-33-703. Court-ordered meeting.

4-33-704. Action by written consent.

#### SECTION.

4-33-706. Waiver of notice.

4-33-708. Action by written ballot.

### B: Voting

4-33-724. Proxies.

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

## PART A — MEETINGS AND ACTION WITHOUT MEETINGS

### 4-33-703. Court-ordered meeting.

(a) The circuit court of the county where a corporation's principal office is located or the Pulaski County Circuit Court, if the corporation does not have a principal office in this state, may summarily order a meeting to be held:

(1) on application of any member or other person entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) on application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty (40) days after the date it was required to be held; or

(3) on application of a member who signed a demand for a special meeting valid under § 4-33-702 or a person or persons entitled to call a special meeting, if:

(i) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.



**History.** Acts 1993, No. 1147, § 703; § 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

**Effective Dates.** Acts 2007, No. 638, § 1, 2007.”

#### **4-33-704. Action by written consent.**

(a)(1) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power.

(2) The action must be evidenced by one (1) or more written consents describing the action taken, signed by those members representing at least eighty percent (80%) of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under § 4-33-703 or § 4-33-707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(d)(1) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent.

(2) If written notice is required, member approval pursuant to this section shall be effective ten (10) days after such written notice is given.

(e)(1) The signature of a member may be affixed to a written consent by any reasonable means, including without limitation facsimile signature or electronic image.

(2) The written consent may be delivered to the corporation by electronic communication, including without limitation facsimile transmission or electronic mail.

**History.** Acts 1993, No. 1147, § 704; 2009, No. 167, § 1.

**Amendments.** The 2009 amendment subdivided (a) and (d); and added (e).

#### **4-33-706. Waiver of notice.**

(a)(1) A member may waive any notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice.

(2) The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member’s attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the

meeting notice, unless the member objects to considering the matter when it is presented.

(c)(1) The signature of a member may be affixed to a waiver of notice by any reasonable means, including without limitation facsimile signature or electronic image.

(2) The waiver of notice may be delivered to the corporation by electronic communication, including without limitation facsimile transmission or electronic mail.

**History.** Acts 1993, No. 1147, § 706; subdivided (a); made minor capitalization changes in (b); and added (c).  
2009, No. 167, § 2.

**Amendments.** The 2009 amendment

#### **4-33-708. Action by written ballot.**

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

(f)(1) The signature of a member may be affixed to a written ballot by any reasonable means, including without limitation facsimile signature or electronic image.

(2) The written ballot may be delivered to the corporation by electronic communication, including without limitation facsimile transmission or electronic mail.

**History.** Acts 1993, No. 1147, § 708; made minor capitalization changes in (b) and (d); and added (f).  
2009, No. 167, § 3.

**Amendments.** The 2009 amendment



**PART B — VOTING****4-33-724. Proxies.**

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(b)(1) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes.

(2) An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form; provided however that no proxy shall be valid for more than three (3) years from its date of execution.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

(1) Attending any meeting and voting in person; or

(2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to § 4-33-727 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(g)(1) The signature of a member or the member's attorney-in-fact may be affixed to a proxy appointment form, a proxy revocation, or a subsequent appointment by any reasonable means, including without limitation facsimile signature or electronic image.

(2) The written ballot may be delivered to the secretary or other officer or agent authorized to tabulate votes by electronic communication, including without limitation facsimile transmission or electronic mail.

**History.** Acts 1993, No. 1147, § 724; subdivided (b); made minor capitalization changes in (e); and added (g).  
2009, No. 167, § 4.

**Amendments.** The 2009 amendment

**SUBCHAPTER 8 — DIRECTORS AND OFFICERS****B: Meetings and Action of the Board****SECTION.****SECTION.****4-33-823. Waiver of notice.**

4-33-821. Action without meeting.



**PART B — MEETINGS AND ACTION OF THE BOARD****4-33-821. Action without meeting.**

(a)(1) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board.

(2) The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) The written consent may be delivered to the corporation by electronic communication, including without limitation facsimile transmission or electronic mail.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(e) The signature of a director may be affixed to a written consent by any reasonable means, including without limitation facsimile signature or electronic image.

**History.** Acts 1993, No. 1147, § 821; 2009, No. 167, § 5.

**Amendments.** The 2009 amendment subdivided (a); rewrote (c), which read: "A

consent delivered by facsimile transmittal shall constitute a valid signed consent under this section"; and added (e).

**4-33-823. Waiver of notice.**

(a)(1) A director may at any time waive any notice required by this chapter, the articles, or bylaws.

(2) Except as provided in subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes of the corporate records.

(3) A signed waiver delivered by facsimile transmittal or other electronic communication bearing an image of the signature shall constitute a valid waiver of notice under this section.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws objects to lack of notice and does not thereafter vote for or assent to the objected to action.

**History.** Acts 1993, No. 1147, § 823; 2009, No. 167, § 6.

**Amendments.** The 2009 amendment

subdivided (a) and inserted "or other electronic communication bearing an image of the signature" in (a)(3).

**PART E — INDEMNIFICATION****4-33-851. Authority to indemnify.****RESEARCH REFERENCES**

**Ark. L. Notes.** Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

**4-33-857. Insurance.****RESEARCH REFERENCES**

**Ark. L. Notes.** Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

**SUBCHAPTER 10 — AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS****A: Articles of Incorporation****SECTION.**

4-33-1002. Amendment by directors.

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**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

**PART A — ARTICLES OF INCORPORATION****4-33-1002. Amendment by directors.**

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles without member approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to change the information required by § 4-20-105(a);

(4) to change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(5) to make any other change expressly permitted by this chapter to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's articles subject to any

approval required pursuant to § 4-33-1030. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with § 4-33-822(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

**History.** Acts 1993, No. 1147, § 1002; 2007, No. 638, § 42.

§ 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

**Effective Dates.** Acts 2007, No. 638,

SUBCHAPTER 11 — MERGER

SECTION.

4-33-1106. Merger with foreign corporation.

**Effective Dates.** Acts 2007, No. 638, § 70: Sept. 1, 2007.

4-33-1106. Merger with foreign corporation.

- (a) Except as provided in § 4-33-1102, one (1) or more foreign nonprofit corporations may merge with one (1) or more domestic nonprofit corporations if:
- (1) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) the foreign corporation complies with § 4-33-1104 if it is the surviving corporation of the merger; and

(3) each domestic nonprofit corporation complies with the applicable provisions of §§ 4-33-1101 — 4-33-1103 and, if it is the surviving corporation of the merger, with § 4-33-1104.
- (b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation may be served with process in any proceeding brought against it as provided in § 4-20-113.

**History.** Acts 1993, No. 1147, § 1106; 2007, No. 638, § 43.

§ 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”

**Effective Dates.** Acts 2007, No. 638,



**SUBCHAPTER 14 — DISSOLUTION****A: Voluntary Dissolution**

## SECTION.

4-33-1408. Unknown claims against dissolved corporation.

**B: Administrative Dissolution**

4-33-1420. Grounds for administrative dissolution.

4-33-1421. Procedure for and effect of administrative dissolution.

## SECTION.

4-33-1422. Reinstatement following administrative dissolution.

4-33-1423. Appeal from denial of reinstatement.

**C: Judicial Dissolution**

4-33-1431. Procedure for judicial dissolution.

**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

**PART A — VOLUNTARY DISSOLUTION****4-33-1408. Unknown claims against dissolved corporation.**

(a) At any time after dissolution is authorized, a corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one (1) time in a newspaper of general circulation in the county where the corporation's principal office is or was last located or in a newspaper of general circulation in Pulaski County if the corporation does not have a principal office in this state;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within one (1) year after publication of the notice.

(c) If the corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the corporation within one (1) year after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under § 4-33-1407;

(2) a claimant whose claim was timely sent to the corporation but not acted on; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the corporation, to the extent of its undistributed assets;  
or

(2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corpora-

tion distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

**History.** Acts 1993, No. 1147, § 1406; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 44.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

## PART B — ADMINISTRATIVE DISSOLUTION

### 4-33-1420. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under § 4-33-1421 to administratively dissolve a corporation if:

- (1) the corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by this chapter;
- (2) the corporation is without a registered agent in this state for one hundred twenty (120) days or more;
- (3) the corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent has been changed or has resigned;
- (4) the corporation's period of duration, if any, stated in its articles of incorporation expires; or
- (5) the corporation does not file the annual disclosure statement required under § 4-33-131 within sixty (60) days after it is due.

**History.** Acts 1993, No. 1147, § 1420; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 569, § 2; 2007, No. 638, § 45.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

### 4-33-1421. Procedure for and effect of administrative dissolution.

(a) Upon determining that one (1) or more grounds exist under § 4-33-1420 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under § 4-33-1406 and notify its claimants under §§ 4-33-1407 and 4-33-1408.



(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**History.** Acts 1993, No. 1147, § 1421; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 46.

**Effective Dates.** Acts 2007, No. 638, § 46.

#### **4-33-1422. Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under § 4-33-1421 may apply to the Secretary of State for reinstatement within two (2) years after the effective date of dissolution. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) state that the corporation's name satisfies the requirements of § 4-33-401; and

(4) contain an affidavit or a certificate from the Department of Finance and Administration reciting that all state taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

**History.** Acts 1993, No. 1147, § 1422; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."  
2007, No. 638, § 47.

**Effective Dates.** Acts 2007, No. 638, § 47.

#### **4-33-1423. Appeal from denial of reinstatement.**

(a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation with a written notice that explains the reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Pulaski County Circuit Court within ninety (90) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.



(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.

**History.** Acts 1993, No. 1147, § 1423; § 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”  
2007, No. 638, § 48.

**Effective Dates.** Acts 2007, No. 638,

PART C — JUDICIAL DISSOLUTION

4-33-1431. Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the Pulaski County Circuit Court. Venue for a proceeding brought by any other party named in § 4-33-1430 lies in the circuit court of the county where a corporation’s principal office is or was last located or the Pulaski County Circuit Court if the corporation does not have a principal office in this state.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

**History.** Acts 1993, No. 1147, § 1431; § 70: Effective date clause provided: “Effective date. This act takes effect September 1, 2007.”  
2007, No. 638, § 49.

**Effective Dates.** Acts 2007, No. 638,

SUBCHAPTER 15 — FOREIGN CORPORATIONS

A: Certificate of Authority

SECTION.

4-33-1502. Consequences of transacting business without authority.

4-33-1503. Application for certificate of authority.

SECTION.

4-33-1504. Amended certificate of authority.

C: Revocation of Certificate of Authority

4-33-1530. Grounds for revocation.

**Effective Dates.** Acts 2007, No. 638,  
§ 70: Sept. 1, 2007.

**PART A — CERTIFICATE OF AUTHORITY****4-33-1502. Consequences of transacting business without authority.**

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d)(1) A foreign corporation that transacts business in this state without a certificate of authority shall pay a civil penalty to the state not to exceed five thousand dollars (\$5,000) for each year and partial year during which it transacted business without a certificate of authority, beginning with the date it began transacting business in this state and ending on the date it obtains a certificate of authority.

(2)(A) The civil penalty imposed by this subsection may be recovered in a suit brought by the Secretary of State.

(B)(i) In addition to any civil penalty, if the court finds that a foreign corporation has transacted business in violation of this chapter, the court shall issue an injunction restraining the foreign corporation from any further transactions or the exercise of any rights and privileges in this state.

(ii) The injunction shall remain in effect until:

(a) All civil penalties and any interest and court costs assessed by the court have been paid; and

(b) The foreign corporation has complied with the provisions of this subchapter.

(e) The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**History.** Acts 1993, No. 1147, § 1502; 2005, No. 1925, § 2.

**A.C.R.C. Notes.** As originally enacted, the third sentence of subsection (d) provided: "The Secretary of State may institute proceedings in the Chancery Court of Pulaski County to collect all penalties due under this subsection."

Amendment 80 to the Arkansas Constitution, adopted by voter referendum and

effective July 1, 2001, established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court ...."

**4-33-1503. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of § 4-33-1506;

(2) the name of the state or country under whose law it is incorporated;

(3) the date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the information required by § 4-20-105(a);

(6) the names and usual business or home addresses of its current directors and officers;

(7) whether the foreign corporation has members; and

(8) whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

**History.** Acts 1993, No. 1147, § 1503; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 50.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."

**4-33-1504. Amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) its corporate name;

(2) the period of its duration;

(3) any of the information required by § 4-20-105(a); or

(4) the state or country of its incorporation.

(b) The requirements of § 4-33-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**History.** Acts 1993, No. 1147, § 1504; § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007." 2007, No. 638, § 51.

**Effective Dates.** Acts 2007, No. 638, § 70: Effective date clause provided: "Effective date. This act takes effect September 1, 2007."



**PART C — REVOCATION OF CERTIFICATE OF AUTHORITY****4-33-1530. Grounds for revocation.**

(a) The Secretary of State may commence a proceeding under § 4-33-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not pay within one hundred twenty (120) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(2) the foreign corporation is without a registered agent or registered office in this state for one hundred twenty (120) days or more;

(3) the foreign corporation does not inform the Secretary of State under § 4-33-1508 or § 4-33-1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety (90) days of the change, resignation, or discontinuance;

(4) an incorporator, director, officer, or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(5) the Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger; or

(6) the corporation does not file the annual disclosure statement required under § 4-33-131 within sixty (60) days after it is due.

(b) The Attorney General may commence a proceeding under § 4-33-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the corporation has continued to exceed or abuse the authority conferred upon it by law; or

(2) the corporation would have been a public benefit corporation had it been incorporated in this state and that its corporate assets in this state are being fraudulently misapplied or wasted.

**History.** Acts 1993, No. 1147, § 1530;  
2007, No. 569, § 3.

**SUBCHAPTER 16 — CONVERSION TO A PUBLIC WATER AUTHORITY****SECTION.**

4-33-1601. Conversion to a public water authority.

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**Effective Dates.** Acts 2003, No. 1330,  
§ 5: Apr. 14, 2003. Emergency clause pro-

vided: "It is found and determined by the  
General Assembly of the State of Arkan-

sas that the statutes relating to water authorities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be-

come effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### 4-33-1601. Conversion to a public water authority.

A corporation which meets the definition of a qualified corporation, as defined by § 4-35-103, may adopt a plan to convert its entity status from that of a nonprofit corporation to a water authority pursuant to § 4-35-101 et seq., unless the articles or bylaws require otherwise, if the conversion is approved:

(1) By a majority of the members of the board of directors of the corporation; and

(2) If the corporation has members, by the lesser of:

(A) Two-thirds ( $\frac{2}{3}$ ) of the votes cast by the members in person or by proxy at a regular or special meeting of the members at which a quorum as defined in § 4-33-722 is present; or

(B) A majority of the members.

**History.** Acts 2003, No. 1330, § 2.

## SUBCHAPTER 17 — TRANSITION PROVISIONS

### 4-33-1701. Application to existing domestic corporations.

## RESEARCH REFERENCES

**Ark. L. Notes.** Sampson, Nonprofit Risk; Nonprofit Insurance, 2008 Ark. L. Notes 83.

## CHAPTER 35

## WATER AUTHORITY ACT

### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. FORMATION OF AND CONVERSION TO A PUBLIC WATER AUTHORITY.
3. BOND PROVISIONS.

**A.C.R.C. Notes.** Acts 2003, No. 1330, § 4, provided: "Transitional Rules. With respect to those entities formed pursuant to the provisions of Act 1003 of 1999 or Act

115 of 2001 prior to the effective date of this act:

"(1) They shall immediately be governed by the provisions of Arkansas Code

§§ 4-35-101 through 4-35-306 at the time this act becomes effective; and

“(2) They shall be deemed to have complied with all organizational provisions of this act including, where applicable, Arkansas Code §§ 4-28-225, 4-33-1601, 4-35-201, and 4-35-202.”

**Publisher’s Notes.** Former chapter 35, regarding the Water Authority Act, was repealed by Acts 2003, No. 1330, § 3. The chapter was derived from the following sources:

- 4-35-101. Acts 1999, No. 1003, § 1.
- 4-35-102. Acts 1999, No. 1003, § 2.
- 4-35-103. Acts 1999, No. 1003, § 3.
- 4-35-104. Acts 1999, No. 1003, § 4.
- 4-35-201. Acts 2001, No. 115, § 1.
- 4-35-202. Acts 2001, No. 115, § 2.
- 4-35-203. Acts 2001, No. 115, § 3.
- 4-35-204. Acts 2001, No. 115, § 4.
- 4-35-205. Acts 2001, No. 115, § 5.
- 4-35-206. Acts 2001, No. 115, § 6.
- 4-35-207. Acts 2001, No. 115, § 7.
- 4-35-208. Acts 2001, No. 115, § 8.
- 4-35-209. Acts 2001, No. 115, § 9.
- 4-35-210. Acts 2001, No. 115, § 10.
- 4-35-211. Acts 2001, No. 115, § 11.
- 4-35-212. Acts 2001, No. 115, § 12.

- 4-35-213. Acts 2001, No. 115, § 13.
- 4-35-214. Acts 2001, No. 115, § 14.
- 4-35-215. Acts 2001, No. 115, § 15.
- 4-35-216. Acts 2001, No. 115, § 16.
- 4-35-217. Acts 2001, No. 115, § 17.

**Effective Dates.** Acts 2003, No. 1330, § 5: Apr. 14, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the statutes relating to water authorities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

**Cross References.** Conversion to public water authority, § 4-28-225.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

- 4-35-101. Legislative intent.
- 4-35-102. Title.
- 4-35-103. Definitions.
- 4-35-104. Construction.
- 4-35-105. Authority generally.
- 4-35-106. Members.
- 4-35-107. Freedom of Information Act.

### SECTION.

- 4-35-108. Tax exemption of projects.
- 4-35-109. Arkansas Public Service Commission — Exemption from jurisdiction.
- 4-35-110. Revenues.
- 4-35-111. Dissolution.

### 4-35-101. Legislative intent.

It is the intent of the General Assembly to provide a means by which a nonprofit corporation involved in the sale, transmission, and distribution of potable water to members of the general public and commercial, industrial, and other users may form or convert its entity status from that of a body corporate to that of a public body politic and governmental entity, thereby allowing the entity the opportunity to access the tax-exempt capital markets and assuring the State of Arkansas and the customers of the entity of the lowest water rates possible.

**History.** Acts 2003, No. 1330, § 3.



**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of assembly, Public Agencies, 24 U. Ark. Little Legislation, 2001 Arkansas General As- Rock L. Rev. 601.

**4-35-102. Title.**

This chapter shall be known and may be cited as the “Water Authority Act”.

**History.** Acts 2003, No. 1330, § 3.

**4-35-103. Definitions.**

As used in this chapter:

(1) “Articles” means the articles of constitution or the articles of conversion and reconstitution of a water authority;

(2) “Board” means the board of directors of a qualified corporation or a water authority;

(3) “Bond” means any bond, promissory note, lease-purchase agreement, or other evidence of indebtedness issued, incurred, or entered into by a water authority;

(4) “Commission” means the Arkansas Natural Resources Commission;

(5) “Indenture” means a mortgage, indenture of mortgage, deed of trust, trust agreement, loan agreement, security agreement, or trust indenture executed by the water authority as security for any bonds;

(6)(A) “Project” means any raw or potable water intake, treatment, distribution, transmission, storage, pumping, well site, well field, or other facility, or any combination of the foregoing, which has as its purpose the provision of raw or potable water to members of the general public and commercial, industrial, or other users along with any and all other appurtenances, equipment, betterments, or improvements related thereto.

(B)(i) A project may include any lands or interest in land deemed by the board to be desirable in connection with the project and necessary equipment for the proper functioning and operation of the buildings or facilities involved.

(ii) A project may include the construction, expansion, operation, or maintenance of a wastewater project or wastewater treatment plant;

(7)(A) “Qualified corporation” means any nonprofit corporation originally formed pursuant to the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., or a predecessor statute, which among other things provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial, and other users or which proposes to accomplish, develop, or construct any of the foregoing.

(B) A qualified corporation includes a nonprofit corporation that constructs, expands, operates, or maintains a wastewater project or wastewater treatment plant;

(8) "State" means the State of Arkansas;

(9) "United States" means the United States of America or any of its agencies or instrumentalities;

(10) "Wastewater project" means sewage collection systems and treatment plants, including, without limitation, intercepting sewers, outfall sewers, force mains, pumping stations, instrumentation and control systems, and other appurtenances necessary or useful for the collection, removal, reduction, treatment, purification, disposal, and handling of liquid and solid waste, sewage and industrial waste, and refuse;

(11) "Wastewater treatment plant" means any plant, disposal field, lagoon, pumping station, or other works:

(A) That use chemical or biological processes for:

(i) The treatment, stabilization, or disposal of sewage, industrial wastewaters, or other wastewaters; or

(ii) The reduction and handling of sludge removed from wastewater; and

(B) From which:

(i) A discharge to the waters of the state occurs; or

(ii) Municipal wastewater is land-applied;

(12) "Water authority" means the public body politic and governmental entity organized pursuant to the provisions of this chapter; and

(13) "Water users" means members of the public and commercial, industrial, and other users who purchase their raw or potable water directly from the water authority.

**History.** Acts 2003, No. 1330, § 3;  
2005, No. 1653, § 1.

#### **4-35-104. Construction.**

(a)(1) This chapter shall be liberally construed in conformity with its intent.

(2) To this end, it shall not be necessary to comply with the general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition, including particularly, without limitation, bidding and appraisal requirements.

(b) All acts and activities of a water authority performed pursuant to the authority of this chapter are legislatively determined and declared to be essential governmental functions.

**History.** Acts 2003, No. 1330, § 3.

**4-35-105. Authority generally.**

(a) There is conferred upon a water authority the authority to take action and to do or cause to be done the things that shall be necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import of this chapter.

(b) It is specifically understood that, except for the provisions of this chapter or the provisions of any other chapter which authorizes the conversion of a qualified corporation to a water authority, no other statutes shall govern or pertain to the creation of a water authority under this chapter or the issuance of bonds by a water authority.

(c) A water authority authorized by this chapter shall have the right to perpetual succession as a public body politic and governmental entity.

(d) The Arkansas Natural Resources Commission shall have the authority, including the powers set forth in § 15-20-206, to promulgate rules and regulations for carrying out the intent of this chapter.

**History.** Acts 2003, No. 1330, § 3.

**4-35-106. Members.**

A water authority shall not have members.

**History.** Acts 2003, No. 1330, § 3.

**4-35-107. Freedom of Information Act.**

All meetings and records of a water authority shall be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

**History.** Acts 2003, No. 1330, § 3.

**4-35-108. Tax exemption of projects.**

Each project by a water authority and all income from each project is determined and declared by the General Assembly to be public property used exclusively for a public purpose and shall be exempt from ad valorem taxation by all taxing authorities.

**History.** Acts 2003, No. 1330, § 3.

**4-35-109. Arkansas Public Service Commission — Exemption from jurisdiction.**

Water authorities organized under this chapter shall be exempt in any and all respects from the jurisdiction and control of the Arkansas Public Service Commission.

**History.** Acts 2003, No. 1330, § 3.



**4-35-110. Revenues.**

(a) A water authority formed pursuant to this chapter shall be operated without profit, but the rates, fees, rents, or other charges for water or wastewater collection, disposal, and treatment and other facilities, supplies, equipment, or services furnished by the water authority shall be sufficient at all times:

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its affairs and the principal of and interest on the obligations issued or assumed by the water authority in the performance of the purposes for which it was organized; and

(2) For the creation of adequate reserves.

(b) The revenues of the water authority shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to reserves for improvements, new construction, depreciation, and contingencies as the board of directors may prescribe from time to time and to other purposes approved by the board, including rebates to water users.

**History.** Acts 2003, No. 1330, § 3;  
2005, No. 1653, § 2.

**4-35-111. Dissolution.**

(a)(1) A water authority shall be dissolved upon the expiration of its term of existence as set forth in the water authority's articles if the term of existence is less than perpetual in nature.

(2) Upon the dissolution, a notice shall be filed with both the Arkansas Natural Resources Commission and the Secretary of State.

(b)(1) A water authority may also be dissolved upon filing articles of dissolution with the approval in writing by the commission.

(2) If approved by the commission, articles of dissolution shall also be filed with the Secretary of State.

(c) Upon dissolution, any assets of a water authority remaining after payment of claims and liabilities of the water authority shall be transferred to another water authority with approval of the commission or to the State of Arkansas or a subdivision of the state, including the commission.

**History.** Acts 2003, No. 1330, § 3.

**SUBCHAPTER 2 — FORMATION OF AND CONVERSION TO A PUBLIC WATER AUTHORITY****SECTION.**

4-35-201. Authority and procedure to form a water authority.

4-35-202. Authority and procedure to convert to a water authority.

**SECTION.**

4-35-203. Effect of formation — Filing with the Secretary of State.

4-35-204. Board of directors.

4-35-205. Officers.

SECTION.

- 4-35-206. Notice.
- 4-35-207. Bylaws.
- 4-35-208. Amendment to articles or by-laws.

SECTION.

- 4-35-209. Registered office and registered agent.
- 4-35-210. Powers generally.

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**Cross References.** Public water sys- Waterworks operators, § 17-51-101 et  
tems, § 20-28-101. seq.

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**4-35-201. Authority and procedure to form a water authority.**

Two (2) or more persons, which may include cities, counties, or other public bodies, may form a water authority authorized by this chapter by presenting to and filing with the Arkansas Natural Resources Commission the following:

(1) Articles of constitution which shall state and include the following information:

(A) The name of the water authority, which shall include the words “public water authority”, it being understood that the water authority may adopt a fictitious operational name upon written request to and approval by the commission and the Secretary of State;

(B) The location of the water authority’s principal office;

(C) The number of directors of the water authority, which shall be at least five (5) and shall be subject to change as provided in this chapter or in the water authority’s bylaws;

(D) The names and addresses of the proposed initial board of directors of the water authority;

(E) The name and address of the agent for service of process of the water authority;

(F) The proposed geographic service area over which the water authority will have jurisdiction; and

(G) Any other matters that the proposed initial board of directors of the water authority may deem necessary and appropriate;

(2) A copy of the water authority’s proposed bylaws, along with any other information which the proposed initial board of directors of the water authority may deem necessary and appropriate;

(3) A statement and certification from the Secretary of State that the proposed name of the water authority is not identical to that of any other water authority in the state or so nearly similar as to lead to confusion and uncertainty;

(4) The filing and review fee that the commission may designate and determine from time to time; and

(5) Any other information and documents which the commission may designate and require.



**4-35-202. Authority and procedure to convert to a water authority.**

(a) Whenever a qualified corporation desires to convert to and become reconstituted as a water authority under and pursuant to this chapter, the qualified corporation shall present to and file with the Arkansas Natural Resources Commission:

(1) A resolution adopted by the board of directors of the qualified corporation and, if the qualified corporation has members, the members of the qualified corporation, which evidences the desire of the qualified corporation to convert to and become reconstituted as a water authority and which shall additionally certify that the qualified corporation:

(A) Was initially formed as a nonprofit corporation;

(B) Does not have the ability to directly access the tax-exempt capital markets other than through a conduit issuer; and

(C) Desires to realize interest rate savings as a result of its conversion to and reconstitution as a water authority pursuant to this chapter;

(2) Articles of conversion and reconstitution which shall be signed by a majority of the water authority's proposed initial board of directors and which shall state and include the following information:

(A) The name of the water authority, which shall include the words "public water authority", it being understood that the water authority may adopt a fictitious operational name upon written request to and approval by the commission and the Secretary of State;

(B) The location of the water authority's principal office;

(C) The number of directors of the water authority, which number shall be at least five (5) and shall be subject to change as provided in this chapter or in the water authority's bylaws;

(D) The names and addresses of the proposed initial board of directors of the water authority;

(E) The name and address of the agent for service of process of the water authority;

(F) The proposed geographic service area over which the water authority will have jurisdiction; and

(G) Any other matters that the proposed initial board of directors of the water authority may deem necessary and appropriate;

(3) A copy of the water authority's proposed bylaws along with any other information which the proposed initial board of directors of the water authority may deem necessary and appropriate;

(4) A statement and certification from the Secretary of State that the proposed name of the water authority is not identical to that of any other water authority in the state or so nearly similar as to lead to confusion and uncertainty;

(5) The filing and review fee that the commission may designate and determine from time to time; and

(6) Any other information and documents which the commission may designate and require.



(b) In the event the qualified corporation has members:

(1)(A) Membership approval is required for the qualified corporation to convert into and become reconstituted as a water authority.

(B) Approval shall be obtained in the manner determined prior to conversion under the qualified corporation's articles, bylaws, or applicable statutes; and

(2) After conversion, the water authority shall have no members.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-203. Effect of formation — Filing with the Secretary of State.**

(a)(1) When articles of constitution or articles of conversion and reconstitution and other required documents have been filed with and accepted by the Arkansas Natural Resources Commission, as evidenced by the issuance by the commission of its certificate of existence in that form that the commission may deem appropriate, the water authority referred to in the articles shall come into existence and shall constitute a public body politic and governmental entity of the State of Arkansas under the name set forth in the certificate of existence, whereupon the water authority shall be vested with the rights and powers granted in this chapter.

(2) Contemporaneously therewith, with respect to a conversion, the qualified corporation shall cease to exist and all assets and liabilities of every nature, including, without limitation, all real property, personal property, contractual obligations, lending obligations outstanding, rights afforded borrowers of federal and state funds, and other tangible and intangible assets and liabilities of every nature, without need for further action or approval by any third party, shall be vested in and shall accrue to the benefit of the water authority.

(b)(1)(A) A copy of a water authority's articles of constitution or articles of conversion and reconstitution shall additionally be filed in the office of the Secretary of State after its receipt, acceptance, and approval by the commission.

(B) The Secretary of State may require the payment of a reasonable filing and receipt fee not in excess of the filing fee charged by the Secretary of State in connection with the receipt and filing of a corporation's articles of incorporation.

(2) Filing a copy of the articles of constitution or articles of conversion and reconstitution, as accepted and approved by the commission, with the Secretary of State shall serve to terminate and dissolve the previous corporate existence of the qualified corporation, effective as of the date of the issuance of the certificate of existence.

**History.** Acts 2003, No. 1330, § 3.

**4-35-204. Board of directors.**

(a)(1) A water authority shall have a board of directors composed of at least five (5) members.

(2) The specific number of initial directors and their terms of office shall be provided in its articles filed with the Arkansas Natural Resources Commission.

(3) Changes to the number and terms of directors may be provided in the articles or bylaws.

(b)(1) The initial directors of a water authority shall be approved by the commission, and they shall serve in accordance with those procedures that a water authority may specify in its bylaws.

(2)(A) A director shall continue in office until the director's successor is properly elected and accepts office.

(B) Successor directors shall be elected either by the board or by the water users as set forth in the bylaws.

(C) A director may serve successive terms.

(3) It is permissible for the bylaws of a water authority to provide that directors shall be selected from specific geographic areas within the total geographic area serviced by a water authority.

(4) In the event a water authority wants to modify or amend the procedures for election of directors, approval shall be expressly granted in writing by the commission.

(c) Unless otherwise provided in the articles or bylaws, the following shall apply to meetings of the board:

(1)(A)(i) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting.

(ii) All other meetings are special meetings.

(B)(i) A board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.

(ii) A director participating in a meeting by this means is deemed to be present in person at the meeting;

(2)(A) Except as provided in subdivision (c)(2)(C) of this section, regular meetings of the board may be held without notice.

(B) Except as provided in subdivision (c)(2)(C) of this section, special meetings of the board shall be preceded by at least two (2) days' written notice to each director of the date, time, and place, but not the purpose, of the meeting.

(C) Any board action to remove a director shall not be valid unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived.

(D) The presiding officer of the board, the president, or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board;

(3)(A)(i) A director may at any time waive any notice required by this chapter, the articles, or bylaws.



(ii)(a) Except as provided in subdivision (c)(3)(B) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes of the water authority's records.

(b) A signed waiver delivered by facsimile transmittal shall constitute a valid waiver of notice under this section.

(B) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter or the articles or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action; and

(4)(A) Except as provided in the bylaws, a majority of the members of a board shall constitute a quorum for the transaction of business, and a vote of a majority of a quorum shall constitute an act of the board.

(B) No vacancy in the membership of a board shall impair the right of a quorum to exercise all the powers and duties of a water authority.

(C) All powers of a water authority shall be exercised by its board of directors or pursuant to its authorization.

(d)(1)(A) Unless prohibited or limited by the articles or bylaws, a board of directors may create one (1) or more committees of the board and appoint members of the board to serve on them.

(B) Each committee shall have two (2) or more directors who shall serve at the direction of the board.

(2) A committee of the board may not:

(A) Authorize the issuance of bonds or any related matters;

(B) Approve or recommend dissolution or the sale, pledge, or transfer of all or substantially all of the water authority's assets;

(C) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(D) Adopt, amend, or repeal the articles or bylaws.

(e)(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(A) In good faith;

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(C) In a manner the director reasonably believes to be in the best interests of the water authority.

(2) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data if prepared or presented by:

(A) One (1) or more officers or employees of the water authority whom the director reasonably believes to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(C) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.



(f) A member of the board of a water authority shall serve without compensation except that he or she may be reimbursed for actual expenses incurred in the performance of his or her duties.

(g) All proceedings of a board shall be reduced to writing by the secretary of the water authority and appropriately recorded and maintained.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-205. Officers.**

(a) The officers of a water authority shall consist of a president, vice president, secretary, treasurer, and such other officers as the board of directors shall deem necessary to accomplish the purposes for which a water authority is organized.

(b) The offices of secretary and treasurer may be held by the same person.

(c) All officers of a water authority shall be elected by the board and shall serve for those terms of office as specified in the bylaws.

(d)(1) An officer may resign at any time by delivering notice to the water authority.

(2)(A) A resignation is effective when the notice is effective unless the notice specifies a future effective date.

(B) If a resignation is made effective at a future date and the water authority accepts the future effective date, its board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(e) A board may remove any officer at any time with or without cause.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-206. Notice.**

(a) Notice may be communicated:

(1) In person;

(2) By telegraph, teletype, telecopier, facsimile, or other similar form of wire or wireless communication; or

(3) By mail or private carrier.

(b) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Two (2) days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first class postage affixed; or

(3) On the date shown on the return receipt if sent by registered or certificated mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

**History.** Acts 2003, No. 1330, § 3.

**4-35-207. Bylaws.**

(a) The persons forming the water authority or the initial board of directors shall adopt bylaws for the water authority and shall file a copy of the executed bylaws with the Arkansas Natural Resources Commission.

(b) The bylaws may contain any provision for regulating and managing the affairs of the water authority that is not inconsistent with law or the articles.

**History.** Acts 2003, No. 1330, § 3.

**4-35-208. Amendment to articles or bylaws.**

(a) Subject to subdivision (c)(2) and subsection (d) of this section, a water authority may amend its articles or bylaws at any time by a majority of the members of the board of directors at any regular or special meeting at which a quorum is present.

(b) Any amendment to the articles of a water authority shall be delivered to and filed with both the Arkansas Natural Resources Commission and the Secretary of State setting forth:

- (1) The name of the water authority;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption; and
- (4) A statement that the amendment was approved by a sufficient vote of the board.

(c)(1) Any amendment to the bylaws shall be filed by the secretary of the water authority with the books and records of the water authority.

(2) However, any change with respect to the number of directors or the procedure for electing or nominating directors shall first be approved in writing by the commission and, if approved, shall be filed with the commission.

(d) The commission shall approve in writing any amendment to the articles or bylaws which changes the geographic service area over which the water authority has jurisdiction.

**History.** Acts 2003, No. 1330, § 3.

**4-35-209. Registered office and registered agent.**

(a) Each water authority shall continuously maintain in this state:

- (1) A registered office with the same address, which must include a street address, as that of the registered agent; and
- (2) A registered agent, who is an individual residing in this state and whose office is identical with the registered office.

(b) A water authority may change its registered office or registered agent by delivering to the Arkansas Natural Resources Commission and the Secretary of State for filing a statement of change that sets forth:

- (1) The name of the water authority;

- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent; and
- (5) If the current registered agent is to be changed, the name of the new registered agent.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-210. Powers generally.**

A water authority shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof:

- (1) To have succession in its designated name;
- (2) To sue and be sued and to prosecute and defend suits in any court having jurisdiction of the subject matter and of the parties;
- (3) To make use of a seal and to alter it at pleasure;
- (4) To adopt and alter bylaws for the regulation and conduct of its affairs and business;
- (5) To acquire, whether by purchase, gift, lease, devise, or otherwise, property of every description that a board of directors may deem necessary to the acquisition, construction, equipment, improvement, enlargement, operation, administration, or maintenance of a project and to hold title thereto;
- (6) To construct, enlarge, equip, improve, maintain, administer, and operate one (1) or more projects;
- (7) To borrow money for any of its purposes;
- (8) To sell and issue its interest-bearing bonds;
- (9) To sell and issue refunding bonds;
- (10) To secure any of its bonds by pledge and indenture as provided in this subchapter;
- (11) To appoint, employ, and compensate such general managers, executive directors, agents, architects, engineers, attorneys, accountants, and other persons and employees as the business of the water authority may require;
- (12) To provide for such insurance as the board may deem advisable;
- (13) To invest any of its funds that the board may determine are not presently needed for its operational purposes in obligations that are direct or guaranteed obligations of the United States or other securities in which public funds may be invested under the laws of this state;
- (14) To invest the proceeds of bonds or any debt service reserves or sinking funds securing the payment of the bonds in any obligations, securities, repurchase agreements, or investment agreements authorized or permitted by the resolution of the water authority authorizing the same or the indenture securing the same;
- (15) To contract, lease, and make lease agreements respecting its properties or any part thereof as lessor or lessee, including financing lease agreements;
- (16) To exercise the power of eminent domain in accordance with the procedures prescribed by § 18-15-301 et seq.;



(17) To sell and convey, mortgage, pledge, or otherwise dispose of any of its:

- (A) Properties;
- (B) Assets;
- (C) Franchises;
- (D) Rights;
- (E) Privileges;
- (F) Licenses;
- (G) Rights-of-way; and
- (H) Easements;

(18) To own and operate facilities necessary to provide potable water and associated services and to provide wastewater collection, disposal, and treatment to Arkansas residents;

(19) To fix, regulate, and collect rates, fees, and rents or other charges for water and wastewater collection, disposal, and treatment and any other facilities, supplies, equipment, or services furnished by the water authority;

(20) To do and perform all acts and things and have and exercise any power as may be convenient or appropriate to effectuate the purposes for which the water authority is formed;

(21) To purchase, receive, or in any manner acquire, own, hold, and use any real and personal property or any interest on the property on the terms as determined by the board of the water authority to be in the best interest of the water authority; and

(22) To enter into water contracts for the purchase or sale of water on a wholesale basis on the terms and conditions the board determines are in the best interest of the water authority.

**History.** Acts 2003, No. 1330, § 3;  
2005, No. 1653, § 3.

### SUBCHAPTER 3 — BOND PROVISIONS

#### SECTION.

- 4-35-301. Issuance of bonds.
- 4-35-302. Execution of bonds.
- 4-35-303. Security for bonds.
- 4-35-304. Bonds — Tax exemption.

#### SECTION.

- 4-35-305. Proceeds from issuance of bonds.
- 4-35-306. Refunding bonds.

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**Effective Dates.** Acts 2005, No. 1927, § 2: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the ability of local entities to issue bonds is an important component to the state economy; that laws concerning local bonds issued by water authorities are in need of immediate clarification in order to allow those authorities to prop-

erly issue bonds for the benefit of the authority and the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may

veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

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#### **4-35-301. Issuance of bonds.**

(a) A water authority is authorized at any time and from time to time to issue its interest-bearing bonds for the purpose of acquiring, constructing, improving, enlarging, completing, and equipping one (1) or more projects.

(b)(1)(A) Prior to a water authority's proposed issuance of bonds, the water authority shall publish one (1) time in a newspaper of general circulation in the affected county or counties in which the project or projects are or will be located:

(i) Notice of the proposed issuance of bonds;

(ii) The maximum principal amount of bonds contemplated to be sold;

(iii) A general description of the project contemplated to be financed or refinanced with bond proceeds; and

(iv) The date, time, and location of a public meeting at which members of the public may obtain further information regarding the bonds and the development of the project.

(B) Notice under subdivision (b)(1)(A) of this section shall be published at least ten (10) days prior to the date of the hearing described in subdivision (b)(1)(A)(iv) of this section.

(2) A water authority president or his or her designee shall be responsible for conducting the hearing and shall require all public comments that might pertain to the proposed issuance of bonds by the water authority.

(3)(A) Upon compliance with the provisions of this section, no other notice, hearing, or approval by any other entity or governmental unit shall be required as a condition to the issuance by a water authority of its contemplated bonds.

(B) The provisions of the Revenue Bond Act of 1987, § 19-9-601 et seq., do not apply to this section.

(4) The requirements of this subsection shall not apply to the issuance of bonds to refund bonds of the water authority for which a public hearing was held.

(c) The principal of and the interest on any bonds may be payable out of the revenues derived from the projects with respect to which the bonds are issued or from any other source available to a water authority.

(d) None of the bonds of a water authority shall ever constitute an obligation or debt of the state, the city, the county in which the water authority operates, the Arkansas Natural Resources Commission, or any officer or director of the water authority or a charge against the credit or taxing powers of the state.

(e) As the water authority shall determine, bonds of the water authority may:

(1) Be issued at any time and from time to time as may be appropriate and necessary;

(2) Be in such form and denominations as may be appropriate and necessary;

(3) Have such date or dates as may be appropriate and necessary;

(4) Mature at such time or times and in such amount or amounts as may be appropriate and necessary, provided that no bonds may mature more than forty (40) years after the date of issuance;

(5) Bear interest payable at such times and at such rate or rates as may be established by the board, as may be appropriate and necessary;

(6) Be payable at such place or places within or without the State of Arkansas as may be appropriate and necessary;

(7) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums, as may be appropriate and necessary; and

(8) Contain other terms and provisions as may be appropriate or necessary.

(f)(1) Bonds of a water authority may be sold at either public or private sale in such manner and from time to time as may be determined by the board to be most advantageous.

(2) The water authority may pay all expenses, premiums, and commissions that the board may deem necessary or advantageous in connection with the authorization, sale, and issuance of its bonds.

(g)(1) All bonds shall contain a recital that they are issued pursuant to the provisions of this chapter.

(2) The recital shall be conclusive that the bonds have been authorized pursuant to the provisions of this chapter.

(h) Other than financing leases, all bonds issued under the provisions of this chapter shall be negotiable instruments within the meaning of the negotiable instruments law of the state and shall be in registered form.

(i) All bonds issued under this chapter shall be approved by resolution adopted by the board of the water authority.

**History.** Acts 2003, No. 1330, § 3;  
2005, No. 1927, § 1.

#### **4-35-302. Execution of bonds.**

(a) Bonds shall be executed by the manual or facsimile signature of the president of the water authority and by the manual or facsimile signature of the secretary of the water authority.

(b) In case an officer whose signature appears on the bonds shall cease to be an officer before the delivery of the bonds, his or her signature shall nevertheless be valid and sufficient for all purposes.

(c) If there is a seal, the bonds shall be sealed with the seal of the water authority.



**History.** Acts 2003, No. 1330, § 3.

#### **4-35-303. Security for bonds.**

(a) The principal of and interest on bonds may be secured by a pledge of the revenues of a water authority of that project financed by the water authority through its issuance of bonds or from any other source that the water authority may deem necessary and appropriate and may be secured by the creation of a forecloseable mortgage and security interest encumbering the real property of the water authority or security interest in all personal property and revenues of the water authority as set forth in the indenture.

(b) The trustee under any indenture may be a trust company or bank having trust powers, whether located within or without the state.

(c) The bond resolution of the water authority authorizing the bonds or indenture may contain, all as the board of directors shall deem advisable and as shall not be in conflict with the provisions of this subchapter, any agreements and provisions customarily contained in instruments securing evidences of indebtedness, including, without limiting the generality of the foregoing:

(1) Provisions respecting the nature and extent of the security;

(2) The collection, segregation, and application of the revenues generated from the operation of any project covered by the bonds, the resolution, or the indenture;

(3) Covenants to always operate the project as a revenue-producing undertaking and to charge and collect, including the obligation to increase from time to time, sufficient revenue to maintain income at required levels;

(4) The maintenance and insurance of the project;

(5) The creation and maintenance of reserve and other special funds; and

(6) The rights and remedies available in the event of default to the holders of the bonds or the trustees under the indenture, bond, or resolution.

(d) If there is any default by a water authority in payment of the principal of or the interest on the bonds or in any of the agreements on the part of the water authority that may properly be included in any indenture, bond, or resolution securing the bonds, the bondholders or the trustee under any bond, resolution, or indenture, as authorized in the bond, resolution, or indenture may either in law or in equity, by suit, action, mandamus, or other proceeding enforce payment of the principal or interest and compel performance of all duties of the board and officers of the water authority and shall be entitled as a matter of right and regardless of the sufficiency of any such security to the appointment of a receiver in equity with all the powers of the receiver for the operation and maintenance of the project covered by the indenture, bond, or resolution and the collection, segregation, and applications of income and revenues therefrom.

(e) The indenture, bond, or resolution may contain provisions regarding the rights and remedies of any trustee thereunder and the holders

of the bonds and the coupons and restricting the individual rights of action of the holders of the bonds and coupons.

(f)(1) In the event of a default in the payment of the principal of or interest on any bonds issued under the provisions of this chapter, any court having jurisdiction may appoint a receiver to take charge of the facilities upon or in which there is a mortgage lien or security interest securing the bonds in default.

(2) The receiver shall have the power and authority to operate and maintain the facilities in receivership, to charge and collect payments, fees, rents, and charges sufficient to provide for the payment of any costs of receivership and operating expenses of the project in receivership, and to apply the revenues derived from the facilities in receivership in conformity with this chapter and the resolution or trust indenture securing the bonds in default.

(3) When the default has been cured, the receivership shall be ended and the facilities returned to the water authority.

(g) The relief provided in this section shall be construed to be in addition and supplemental to the other remedies provided in this chapter and the remedies that may be provided in the resolution or trust indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from and mortgage lien on or security interest in facilities as specified in and fixed by the resolution or trust indenture authorizing or securing successive issues of bonds.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-304. Bonds — Tax exemption.**

(a) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income, inheritance, and estate taxes.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-305. Proceeds from issuance of bonds.**

(a) The proceeds derived from all of the bonds other than refunding bonds may be used only to pay the costs of acquiring, constructing, improving, enlarging, and equipping the project with respect to which they were issued, as may be specified in the proceedings in which the bonds are authorized to be issued and all costs incidental thereto, including, without limitation:

(1) The costs of any land forming a part of the project and all easements which may pertain to or be associated with any project;

(2) The costs of the labor, materials, and supplies used in any construction, improvement, and enlargement, including architect's and



engineer's fees and the cost of preparing contract documents and advertising for bids along with all other reasonable and necessary project costs;

(3) The purchase price of and the cost of installing equipment for the project;

(4) Legal, fiscal, accounting, and recording fees and expenses incurred in connection with the authorization, sale, and issuance of the bonds issued in connection with the project;

(5) Interest on bonds for a reasonable period prior to, during, and after the time required for the construction and equipment;

(6) The amount necessary to fund a debt service reserve in an amount deemed appropriate by the water authority;

(7) Costs associated with the obtaining of default insurance, ratings, and other credit enhancements of every nature; and

(8) Other operational expenses, reserves, and other accounts of every nature.

(b) If any of the proceeds derived from the issuance of bonds remains undisbursed after completion of the project and the making of all such expenditures, the balance shall be used to pay principal of and interest on the bonds to fund a debt service reserve or for the redemption of bonds of the same issue.

**History.** Acts 2003, No. 1330, § 3.

#### **4-35-306. Refunding bonds.**

(a) A water authority, at any time and from time to time, may issue refunding bonds for the purpose of refunding the principal of and interest on any bonds of the water authority theretofore issued under this subchapter or bonds originally issued by the qualified corporation and then outstanding, whether or not the principal and interest shall have matured at the time of the refunding under this subchapter, and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem or retire the bonds to be refunded.

(b) The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were authorized to be issued.

(c)(1) Any of the refunding may be effected either by sale of the refunding bonds and the application of the proceeds by immediate application or by escrow deposit, with the right to invest moneys in the escrow deposit until needed for the redemption, or by exchange of the refunding bonds for the bonds or interest coupons to be refunded thereby.

(2) However, the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they may be paid or redeemed by the water authority under their respective provisions.



(d) Any refunding bonds of the water authority shall be payable solely from the revenues out of which the bonds to be refunded were payable or from those other sources or other revenues which might be identified in the indenture or resolution authorizing the bonds.

(e) All provisions of this chapter pertaining to bonds of the water authority that are not inconsistent with the provisions of this section shall apply also to refunding bonds issued by the water authority to the extent applicable.

**History.** Acts 2003, No. 1330, § 3.

## CHAPTER 36

### ARKANSAS BENEFIT CORPORATION ACT

#### SUBCHAPTER.

1. PRELIMINARY PROVISIONS.
2. CORPORATE PURPOSES.
3. ACCOUNTABILITY.
4. TRANSPARENCY.

#### SUBCHAPTER 1 — PRELIMINARY PROVISIONS

##### SECTION.

- 4-36-101. Title.  
4-36-102. Application of chapter.  
4-36-103. Definitions.

##### SECTION.

- 4-36-104. Formation — Fees.  
4-36-105. Election of status.  
4-36-106. Termination of status.

#### 4-36-101. Title.

This chapter shall be known and may be cited as the “Arkansas Benefit Corporation Act”.

**History.** Acts 2013, No. 1388, § 1.

#### 4-36-102. Application of chapter.

- (a) This chapter shall apply to all benefit corporations.
- (b) This chapter does not imply that a contrary statute or rule of law applies to a business corporation that is not a benefit corporation.
- (c)(1) Except as otherwise provided in this chapter, the Arkansas Business Corporation Act, § 4-27-101 et seq., is generally applicable to a benefit corporation.
- (2) Specific provisions of this chapter shall control over the general provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq.
- (3) A benefit corporation may be simultaneously subject to this chapter and other statutes that provide for the incorporation of a specific type of business corporation.
- (d) The articles of incorporation or bylaws of a benefit corporation shall not limit, relax, be inconsistent with, or supersede this chapter.

**History.** Acts 2013, No. 1388, § 1.

#### **4-36-103. Definitions.**

(a) As used in this chapter:

(1) "Benefit corporation" means a business corporation that is subject to this chapter;

(2) "Benefit director" means the director designated as the benefit director of a benefit corporation under § 4-36-302;

(3) "Benefit enforcement proceeding" means a claim or action for:

(A) Failure of a benefit corporation to pursue or create a general public benefit or a specific public benefit purpose as stated in its articles of incorporation; or

(B) Violation of an obligation, duty, or standard of conduct under this chapter;

(4) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under § 4-36-304;

(5) "General public benefit" means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation;

(6)(A) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

(B) A person shall be independent even if serving as benefit director or benefit officer.

(C) A material relationship between a person and a benefit corporation or its subsidiaries is conclusively presumed to exist if:

(i) The person is, or has been in the last three (3) years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation;

(ii) An immediate family member of the person is, or has been in the last three (3) years, an executive officer other than a benefit officer of the benefit corporation or its subsidiary; or

(iii) There is beneficial or record ownership of five percent (5%) or more of the outstanding shares of the benefit corporation by the person or an association:

(a) Of which the person is a director, an officer, or a manager; or

(b) In which the person owns beneficially or of record five percent (5%) or more of the outstanding equity interests;

(7) "Minimum status vote" means:

(A) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of a class or series may vote as a class on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of the class or series; and

(ii) The corporate action shall be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds ( $\frac{2}{3}$ ) of the votes that all shareholders of the class or series are entitled to cast on the action.



(B) In the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) The holders of a class or series of equity interest in the entity that are entitled to receive a distribution from the entity may vote on or consent to the action regardless of an otherwise applicable limitation on the voting or consent rights of the class or series; and

(ii) The action shall be approved by vote or consent of the holders described in subdivision (7)(B)(i) of this section entitled to cast at least two-thirds ( $\frac{2}{3}$ ) of the votes or consents that all of those holders are entitled to cast on the action;

(8) "Specific public benefit" means:

(A) Providing low-income or underserved individuals or communities with beneficial products or services;

(B) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) Preserving the environment;

(D) Improving human health;

(E) Promoting the arts, sciences, or advancement of knowledge;

(F) Increasing the flow of capital to entities with a public benefit purpose; and

(G) Conferring any other particular benefit on society or the environment;

(9) "Subsidiary" means in relation to a person, an association in which the person owns beneficially or of record fifty percent (50%) or more of the outstanding equity interests; and

(10) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

(A) Comprehensive in that it assesses the effect of the business and its operations on the interests listed in § 4-36-301(a)(1)(B)-(E);

(B) Developed by an organization that is independent of the benefit corporation and satisfies the following:

(i) Not more than one-third ( $\frac{1}{3}$ ) of the members of the governing body of the organization are representatives of:

(a) An association of businesses operating in a specific industry, the performance of whose members is measured by the standard;

(b) Businesses from a specific industry or an association of businesses in that industry; or

(c) A business whose performance is assessed against the standard; and

(ii) The organization is not materially financed by an association or business described in subdivision (10)(B)(i) of this section;

(C) Credible because the standard is developed by a person that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and



(ii) Uses a balanced multistakeholder approach, including a public comment period of at least thirty (30) days to develop the standard; and

(D) Transparent because the following information is publicly available:

(i) The standard criteria considered if measuring the overall social and environmental performance of a business;

(ii) The relative weighting factor of those criteria;

(iii) The development and revision of the standard, including:

(a) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard; and

(b) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(iv) An accounting of the sources of financial support for the organization, with sufficient detail to disclose a relationship that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of “independent” and “subsidiary” in subsection (a) of this section, a percentage of ownership in an entity is computed as if all outstanding rights to acquire equity interests in the association had been exercised.

**History.** Acts 2013, No. 1388, § 1.

#### **4-36-104. Formation — Fees.**

(a) A benefit corporation shall be formed under the Arkansas Business Corporation Act, § 4-27-101 et seq., and its articles of incorporation shall state that it is a benefit corporation.

(b) The Secretary of State shall collect filing fees, service fees, and fees for copying when documents are delivered to him or her to be filed under this subchapter and under § 4-27-122.

**History.** Acts 2013, No. 1388, § 1.

#### **4-36-105. Election of status.**

(a) An existing business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that they contain, in addition to the requirements of § 4-27-202, a statement that the corporation is a benefit corporation.

(b) To be effective, an amendment shall be adopted by at least the minimum status vote.

(c) If an entity is not a benefit corporation but is a constituent corporation or organization in a merger or conversion with a benefit corporation, the merger or conversion shall be approved by at least the minimum status vote.

**History.** Acts 2013, No. 1388, § 1.

**4-36-106. Termination of status.**

(a) A benefit corporation may end its benefit corporation status and not be subject to this chapter by amending its articles of incorporation to delete the statement in the articles of incorporation required by § 4-36-104 or § 4-36-105 to be stated in the articles of incorporation of a benefit corporation.

(b) To be effective, the amendment shall be adopted by at least the minimum status vote.

(c) If a merger or conversion would have the effect of terminating the status of a business corporation as a benefit corporation, to be effective, the merger or conversion shall be approved by at least the minimum status vote.

(d) A sale, lease, exchange, or other disposition of all or a substantial part of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

**History.** Acts 2013, No. 1388, § 1.

**SUBCHAPTER 2 — CORPORATE PURPOSES****SECTION.**

4-36-201. Corporate purposes.

**4-36-201. Corporate purposes.**

(a) A benefit corporation shall have a purpose of creating a general public benefit and it is in addition to its purpose under § 4-36-103(a)(5).

(b)(1) The articles of incorporation of a benefit corporation may identify one (1) or more specific public benefits that it is the purpose of the benefit corporation to pursue in addition to its purposes under § 4-36-103(a)(5) and subsection (a) of this section.

(2) The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation under subsection (a) of this section.

(c) The creation of a general public benefit and a specific public benefit under subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d)(1) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to pursue.

(2) To be effective, the amendment shall be adopted by at least the minimum status vote.

(e) A professional corporation that is a benefit corporation does not violate the Arkansas Professional Corporation Act, § 4-29-201 et seq., by having the purpose to pursue a general public benefit or a specific public benefit.

**History.** Acts 2013, No. 1388, § 1.



**SUBCHAPTER 3 — ACCOUNTABILITY**

## SECTION.

4-36-301. Standard of conduct for directors.

4-36-302. Benefit director.

## SECTION.

4-36-303. Standard of conduct for officers.

4-36-304. Benefit officer.

4-36-305. Right of action.

**4-36-301. Standard of conduct for directors.**

(a) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(1) Shall consider the effects of an action or inaction on:

(A) The shareholders of the benefit corporation;

(B) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

(C) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;

(D) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

(E) The local and global environment;

(F) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(G) The ability of the benefit corporation to accomplish its general public benefit purpose and a specific public benefit purpose;

(2) May consider other pertinent factors or the interests of a group that they consider appropriate; and

(3) Need not give priority to the interests of a particular person or group referred to in subdivision (a)(1) or (a)(2) of this section over the interests of another person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(b) The consideration of interests and factors required by subsection (a) of this section does not constitute a violation of § 4-27-801.

(c) A director is not personally liable for monetary damages for:

(1) Action taken as a director if the director performed the duties of office in compliance with § 4-27-801; or

(2) Failure of the benefit corporation to pursue a general public benefit or a specific public benefit.

(d) A director does not have a duty to a person that is a beneficiary of a general public benefit purpose or a specific public benefit purpose of a



benefit corporation arising from the status of the person as a beneficiary.

**History.** Acts 2013, No. 1388, § 1.

#### **4-36-302. Benefit director.**

(a) The board of directors of a benefit corporation may include a director who:

(1) Is designated the benefit director; and

(2) Has the powers, duties, rights, and immunities provided in this subchapter in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation.

(b)(1) The benefit director is elected and may be removed under § 4-27-803.

(2) The benefit director shall be an independent individual.

(c) The benefit director may serve concurrently as the benefit officer and the benefit director.

(d) The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(e) The benefit director shall prepare and the benefit corporation shall include in the annual benefit report to shareholders as required by § 4-36-401 the opinion of the benefit director on:

(1) Whether the benefit corporation acted under its general public benefit purpose and a specific public benefit purpose in all material respects during the period covered by the report;

(2) Whether the directors complied with § 4-36-301(a) and the officers complied with § 4-36-303(a); and

(3) Whether the benefit corporation or its directors or officers failed to comply with this section, including a description of the ways in which the benefit corporation or its directors or officers failed to comply.

(f) The action or inaction of an individual in the capacity of a benefit director is an action or inaction of that individual in the capacity of a director of the benefit corporation.

(g) Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by § 4-26-811, a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

(h) The benefit director of a professional corporation does not need to be independent.

**History.** Acts 2013, No. 1388, § 1.

**4-36-303. Standard of conduct for officers.**

(a) An officer of a benefit corporation shall consider the interests and factors described in § 4-36-301 if:

(1) The officer has discretion to act with respect to a matter; and

(2) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of a general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(b) The consideration of interests and factors described in subsection (a) of this section shall not constitute a violation of § 4-27-841.

(c) An officer is not personally liable for monetary damages for:

(1) An action or omission as an officer if the officer performed the duties of the position in compliance with § 4-27-841 and this section; or

(2) Failure of the benefit corporation to pursue a general public benefit or a specific public benefit.

(d) An officer does not have a duty to a person that is a beneficiary of a general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

**History.** Acts 2013, No. 1388, § 1.

**4-36-304. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) A benefit officer shall have:

(1) The powers and duties relating to the purpose of the corporation to pursue a general public benefit or a specific public benefit provided:

(A) By the bylaws; or

(B) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(2) The duty to prepare the benefit report required by § 4-36-401.

**History.** Acts 2013, No. 1388, § 1.

**4-36-305. Right of action.**

(a) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(1) Failure to pursue or create a general public benefit or a specific public benefit stated in its articles of incorporation; or

(2) Violation of a duty or standard of conduct under this chapter.

(b) A benefit corporation shall not be liable for monetary damages under this chapter for the failure of the benefit corporation to pursue a general public benefit or a specific public benefit.

(c) A benefit enforcement proceeding may begin and be maintained only:

- (1) Directly by the benefit corporation; or
- (2) Derivatively by:
  - (A) A shareholder;
  - (B) A director;
  - (C) A person or group of persons that owns beneficially or of record five percent (5%) or more of the equity interest in an entity of which the benefit corporation is a subsidiary at the time of the action or inaction complained of; or
  - (D) Other persons as named in the articles of incorporation or bylaws of the benefit corporation.

**History.** Acts 2013, No. 1388, § 1.

## SUBCHAPTER 4 — TRANSPARENCY

### SECTION.

4-36-401. Annual reports.

### **4-36-401. Annual reports.**

- (a)(1) A benefit corporation shall prepare an annual benefit report and an annual franchise tax report under § 26-54-104.
- (2) An annual benefit report shall include:
  - (A) A narrative description of:
    - (i) The ways in which the benefit corporation pursued the general public benefit during the year and the extent to which the general public benefit was pursued;
    - (ii) Both:
      - (a) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state is the purpose of the benefit corporation to pursue; and
      - (b) The extent to which that specific public benefit was pursued;
    - (iii) Circumstances that have hindered the creation by the benefit corporation of a general public benefit or a specific public benefit; and
    - (iv) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report;
  - (B)(i) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:
    - (a) Applied consistently with an application of that standard in earlier benefit reports; or
    - (b) Accompanied by an explanation of the reasons for an inconsistent application.
  - (ii) The assessment does not need to be performed, audited, or certified by a third-party standards provider;
  - (C) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed;
  - (D) The compensation paid by the benefit corporation during the year to each director for serving in the capacity of a director;



(E) The statement of the benefit director described in § 4-36-302; and

(F) A statement of the connection between the organization that established the third-party standard or its directors, officers, or a holder of five percent (5%) or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or a holder of five percent (5%) or more of the outstanding shares of the benefit corporation, including a financial or governance relationship that may materially affect the credibility of the use of the third-party standard.

(b) A benefit corporation shall send a benefit report to each shareholder annually:

(1) Before the stated due date of an annual franchise tax under § 26-54-104; or

(2) When the benefit corporation delivers an annual financial report to its shareholders.

(c)(1) A benefit corporation shall post all of its benefit reports on the public part of its Internet website.

(2) The compensation paid to a director and a financial or proprietary informationist included in the benefit reports may be omitted from the benefit reports as posted.

(d)(1) If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to a person who requests a copy.

(2) The compensation paid to directors and the financial or proprietary informationist included in the benefit report may be omitted from the copy of the benefit report provided.

(e)(1) Concurrently with the delivery of the benefit report to shareholders under subsection (b) of this section, the benefit corporation shall deliver a copy of the benefit report to the Secretary of State for filing.

(2) The compensation paid to directors and the financial or proprietary informationist included in the benefit report may be omitted from the benefit report as delivered to the Secretary of State.

(3) The Secretary of State shall charge a fee of seventy dollars (\$70.00) for filing a benefit report.

**History.** Acts 2013, No. 1388, § 1.









